111-479

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1883.

No. 298.

HENRY J. ANDERSON, RECEIVER OF THE FIRST NATIONAL BANK OF ALLENTOWN, PLAINTIFF IN ERROR,

vs.

THE PHILADELPHIA WAREHOUSE COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED SEPTEMBER 20, 1881.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1883.

No. 298.

HENRY J. ANDERSON, RECEIVER OF THE FIRST NATIONAL BANK OF ALLENTOWN, PLAINTIFF IN ERROR,

vs.

THE PHILADELPHIA WAREHOUSE COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED SEPTEMBER 20, 1881.

INDEX.

	ORIGINAL.	PRINT.
Writ of error	1	1
Citation	2	1
Summons and return	4	2
Narr	5	3
Plea	10	4
Trial	11	5
Verdict	12	5
Motion for a new trial, &c	13	5
Reasons of court for granting new trial	19	7
Trial	21	8
Charge of court	22	8
Verdict	39	13
Motion for a new trial	40	13
Motion for a new trial withdrawn	41	14
Judgment	41	14
Bond on writ of error	43	14
Bill of exceptions	46	15
Testimony of Henry J. Anderson	47	15
Entries from stock ledger	62	22
Certificate No. 3	63	22
Certificate No. 85	64	23
Certificate No. 86	65	23
Certificate No. 118	67	24
Testimony of Francis Ferris	70	25
L. C. Madeira	71	26

	ORIGINAL.	PRINT.
Testimony of Wm. H. Blumer	73	27
Letter, Gross, cashier, to Warehouse Co., April 7, 1877	77	28
Warehouse Co. to Gross, cashier, April 9, 1877	77	28
Madeira, secretary, to Blumer & Co., January 3, 1872	78	29
Blumer & Co. to Henry, president, January 4, 1872	79	29
Henry, president, to Blumer, president, January 6, 1872	80	29
Testimony of F. Charlton Henry	81	30
J. Lauber Welsh	98	37
Letter, Blumer to Henry, January 10, 1872	108	41
Extract from by-laws of defendant	110	41
Defendant's points	114	42
Plaintiff's points	117	43
Plaintiff's exceptions	121	44
Clerk's certificate	127	46

1 UNITED STATES,
Eastern district of Pennsylvania, } *sct.*

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you, between Henry J. Anderson, receiver of the First National Bank of Allentown, is plaintiff, and the Philadelphia Warehouse Company is defendant, in a plea of trespass on the case, a manifest error has intervened to the great damage of the said Henry J. Anderson, receiver, &c., as in their complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid with all things concerning them and this writ; so that you have the same before the honorable the justices of the supreme court of the United States, sitting at Washington, D. C., on the second Monday of October next, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Morrison R. Waite, chief justice of the supreme court of the United States, at Philadelphia, this twenty-fifth day of July, A. D. one thousand eight hundred and eighty-one, and in the one hundred and sixth year of the independence of the said United States.

[SEAL.] SAMUEL BELL,
Clerk of Circuit Court U. S.

2 THE UNITED STATES OF AMERICA, *ss.*

To the Philadelphia Warehouse Company, greeting:

You are hereby cited and admonished to be and appear at a supreme court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania in the third circuit, wherein Henry J. Anderson, receiver of the First National Bank of Allentown, is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 30th day of August, in the year of our Lord one thousand eight hundred and eighty-one.

WM. BUTLER, *Judge.*

Service accepted.

GEORGE JUNKIN,
Per R. C. McM.
R. C. McMURTRIE,
Philadelphia.

3 In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit.

Henry J. Anderson, receiver of the First National Bank of Allentown,
vs.
Philadelphia Warehouse Company.

UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, } *ss.*

Pleas and proceedings before the honorable the judges of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, of October session, 1879.—No. 25.

It is thus contained:

Be it remembered, that on the 10th day of December, A. D. 1879 Henry J. Anderson, receiver of the First National Bank of Allentown, by his attorneys, Preston K. Erdman and Edward Harvey, esquires, comes into court here, and sues forth therefrom a writ of summons against the Philadelphia Warehouse Company, which, with the endorsement and return thereto, is in the words and figures following, to wit:

4 UNITED STATES,
Eastern district of Pennsylvania, } *sct.*

The President of the United States to the Marshal of the eastern district of Pennsylvania, greeting:

We command you that you summon the Philadelphia Warehouse Company, late of your district, if it may be found therein, so that it be and appear before the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, of the third circuit, at a session of the same court to be holden at Philadelphia on the first Monday of January next, to answer to Henry J. Anderson, receiver of the First National Bank of Allentown, in a plea of trespass on the case, and have you then there this writ.

Witness the Honorable Morrison R. Waite, chief justice of the supreme court of the United States, at Philadelphia, this tenth day of December, A. D. 1879, and in the 104th year of the independence of the United States.

[SEAL.]

WM. A. WILLIAMSON,
Clerk of circuit court, U. S.

Dec. 13th, 1879, at Phila., in my district, served the within writ on the Philadelphia Warehouse Company by reading the same in the hearing of Thomas C. Henry, president of said company, and leaving a true and attested copy thereof with him.

So answers JAMES N. KERNS,
U. S. Marshal,
per C. McCORMICK,
Deputy.

(Endorsed:) No. 25; circuit court, October session, 1879; Anderson, receiver, *vs.* Philadelphia Warehouse Co.; summons; case; returnable on the first Monday of January next; Preston K. Erdman, Edward Harvey, attorneys for plaintiff.

5 And afterwards, to wit, on the 11th day of February, A. D. 1880, the plaintiff by his attorneys comes into court here and files his declaration, which being read, is as follows, to wit:

In the Circuit Court of the United States for the eastern district of Pennsylvania.—October sess., 1879, No. 25.

EASTERN DISTRICT OF PENNSYLVANIA, *ss*:

The Philadelphia Warehouse Company, a corporation under the laws of Pennsylvania, was attached to answer Henry J. Anderson, receiver of the First National Bank of Allentown, of a plea of trespass on the case upon promises, and thereupon the said Henry J. Anderson, receiver as aforesaid, plaintiff, by his attorneys complains and says:

For that whereas heretofore, to wit, on the fifteenth day of April, A. D. 1878, the Honorable John J. Knox, comptroller of the currency of the United States, having become satisfied of the insolvency of the First National Bank of Allentown, Pennsylvania, a banking association authorized and acting under the laws of the United States, after a due examination of its affairs, appointed me, J. G. Kennedy, receiver of the First National Bank of Allentown aforesaid; that afterwards, to wit, on the eighteenth day of May,
A. D. 1878, when the said J. G. Kennedy, tendering his res-
6 ignation as receiver aforesaid, the said the Hon. John J. Knox, comptroller of the currency aforesaid, appointed Henry J. Anderson, plaintiff herein, receiver of the First National Bank of Allentown aforesaid in the place and stead of the said J. G. Kennedy; and the said plaintiff further says that afterwards, to wit, upon the 10th day of May, A. D. 1878, the said the Hon. John Jay Knox, acting in his official capacity as comptroller of the currency of the United States as aforesaid, and under and by virtue of the provisions of the acts of Congress in such case made and provided, and in pursuance of the powers vested in him by the said acts of Congress, ordered and made an assessment and requisition upon the shareholders of the said First National Bank of Allentown, and upon

such and every one of the said shareholders, ratably to the amount of twenty dollars per centum of the par value of the shares of the capital stock of the said association held or owned by them
7 respectively at the time of the said failure of the said First National Bank of Allentown, and then and there directed the receiver of the said First National Bank of Allentown, theretofore appointed by him, to enforce to the extent aforesaid the individual liability of the said shareholders.

And the said plaintiff further says that at the time of the failure of the said First National Bank of Allentown, as aforesaid, the said defendant, the Philadelphia Warehouse Company, was then and there the holder of four hundred and fifty shares of the capital stock of the said First National Bank of Allentown, of the par value of one hundred dollars each, and that the said defendant, by its officers, had notice of the said assessment and requisition of the comptroller of the currency of the United States aforesaid, whereby, and by force of the said act of congress and the aforesaid requisition and assess-
8 ment, the said defendant then and there, to wit, on the 10th of May, A. D. 1878, became liable, and then and there undertook and faithfully promised, to pay the said plaintiff the amount of the said requisitions and assessment upon the said shares of capital stock held by the said defendant so as aforesaid, to wit, nine thousand dollars lawful money, etc. Nevertheless the said defendant, although often requested to pay the said sum of money to the said plaintiff, has not regarded its said promises and undertakings, and has not paid unto the plaintiff the said sum of money, or any part thereof, but to pay the same has hitherto wholly neglected and refused, to the damage of the said plaintiff fifty thousand dollars.

(Signed) P. K. ERDMAN,
For self and
EDW. HARVEY,
Feb. 10, 1880. *Att'ys for Pl'ff.*

9 (Endorsed:) U. S. C. C. No. 25. Oct. sess., 1879. Anderson, receiver, *vs.* Warehouse Co.

Narr.

To cl'k C. C. U. S.:

Please enter rule on defendant to plead in fourteen days, or judg't sec. leg.

P. K. ERDMAN,
EDW. HARVEY,
For Pl'ff.

Filed February 11, 1880.

10 And thereupon afterwards, to wit, on the 14th day of February, A. D. 1880, the defendants, by their attorney, George Junkin, esq., come into court here and file their plea, which, being read, is as follows, to wit:

U. S. C. C., No. 25.—October session, 1879.

Anderson
vs.
Warehouse Company.

The defendant pleads non-assumpsit.

JUNKIN,
Att'y for Defendant.

(Endorsed:) U. S. C. C., 25; October session, 1879; Anderson *vs.* Warehouse Company; plea; filed February 14, 1880; Junkin.

11 And thereupon it is ordered that a jury come to try the issue joined in this cause.

And thereupon afterwards, to wit, on the 6th day of May, A. D. 1880, came the parties aforesaid, and the jurors of the jury aforesaid being called, came, to wit:

1. Benjamin Ashburner,
2. William Brotherhead,
3. Henry S. Dotterer,
4. Joseph L. Franklin,
5. Samuel W. Kay,
6. Joseph Lewis,
7. Reuben B. Miller,
8. Uriah Matthews,
9. Samuel Nevins,
10. Samuel A. Ristine,
11. Charles J. Smith,
12. Jesse Thorne,

who are duly empanelled, returned chosen, tried and sworn, or affirmed, to speak the truth in the issue joined, &c.

12 And thereupon, on the day and year last aforesaid, the jurors aforesaid, upon their oaths or affirmations aforesaid, respectfully do say that they find for the plaintiff, and assess the damages at ten thousand and twenty-six dollars, ($10,026.)

13 And thereupon afterwards, to wit, on the 10th day of May, A. D. 1880, the defendant, by its attorney, comes into court here and moves the court for a new trial, and for judgment on point reserved, and files reasons therefor, which, being read, is as follows:

U. S. C. C., No. 25.—October session, 1879.

Anderson, receiver, &c.,
vs.
The Philadelphia Warehouse Company.

The defendants move for a new trial and for judgment on the point reserved, and assign the following reasons for a new trial, viz:

1st. Because the court affirmed the plaintiff's first point, subject to its judgment hereafter on the defendant's first point, which was reserved, and charged the jury to find for the plaintiff, if they believed the evidence produced by him and accepted his view of the facts, declining to instruct as requested in the defendant's other points.

2nd. Because the court refused to charge the jury as requested in the points of the defendants from the second to the seventh, 14 inclusive, viz:

II. That the fact that there was a transfer of the shares to T. C. Henry, president, did not make the corporation defendant the holder of the shares, so as to render the defendant liable in this action.

III. That if the jury find that at the very outset of the transaction with Bloomer & Co. the defendant refused to be the holder of the shares, and requested that they be put in the name of a third party, to hold for Bloomer & Co., the real owners and pledgers, and also as security for the loans made or to be made by the defendant to Bloomer & Co., and that the shares were so put and have been so held, then the defendant is not liable in this action, and the verdict must be for the defendant.

IV. That if the jury find that the shares were never in the name of the defendant, and were put in the name of T. C. Henry, president, Dennis McCloskey, and Francis Ferris, to hold for Bloomer & Co., the real owners, and entitled to redeem the same, and 15 also as security for loans made or to be made by the defendant to Bloomer & Co., then the defendant is not liable in this action, and the verdict must be for the defendant.

V. That if the jury find that the defendant refused to have the stock put in the name of their president, because of the liabiliity attaching to the holder of the shares, and the same were put in the name of McCloskey and Ferris to hold as security for the loans to be made by defendant to Bloomer & Co., such an arrangement was not illegal or in contravention of the rights of any creditor of said bank, and the same did not render the defendant liable for contribution on the said shares of stock under the calls made by the receiver, and the verdict must be for the defendant.

VI. That if the jury find that the 450 shares of stock were never registered on the books of the bank in the name of the defendant; that the defendant never received any dividends thereon; that the defendant never voted thereon or exercised any acts of ownership thereon, and that the legal title to the same was in Henry 16 McCloskey or Ferris merely to secure the defendants for any loans they might make to Bloomer & Co., then the defendants are not liable in this action, and the verdict must be for the defendants.

VII. If the jury believe from the evidence that William H. Bloomer & Co. delivered to the Philadelphia Warehouse Company a certificate for 450 shares of stock in the name of T. C. Henry, president, of which they claimed to be owners, and that the directors of the Philadelphia Warehouse Company, at their first meeting thereafter, ordered said certificate to be returned to William H. Bloomer & Co., which was done, and William H. Bloomer, of said firm, signed and issued a certificate in the name of Dennis McCloskey, the issuing of such certificate would have the same legal

effect as if T. C. Henry, president, had transferred the said 450 shares to William H. Bloomer & Co., and the said William H.
17 Bloomer & Co. had transferred the same to Dennis McCloskey.

3d. Because the verdict is against the law and the evidence.

Points reserved.

Plaintiff's first point, viz:

1. If the jury find that the corporation defendant held the 450 shares of the capital stock of the 1st National Bank of Allentown as collateral security for a loan to Wm. H. Bloomer & Co., by transfer to the T. C. Henry, pres., and then by the defendant to its irresponsible employee of the defendants for the purpose of avoiding liability as stockholders, the verdict must be for the plaintiff.

Defendant's first point, viz:

1. That in order to recover in this case the plaintiff must establish as a fact that the corporation defendant became and was the holder of the 450 shares of the stock of "The First National Bank of Allentown," and that there is no evidence that the defendant was the holder of said shares, and the verdict must be for the defend-
18 ant.

GEO. JUNKIN,
Attorney for Defendants.

May 10, 1880.

(Endorsed:) 25; October session, 1879; Anderson, receiver, &c., *vs.* Warehouse Company, U. S. C. C.; motion for a new trial and for judgment on point reserved. Filed May 10, 1880; Junkin, attorney for motion and defendant.

19 And thereupon afterwards, to wit, on the 22nd day of October, A. D. 1880, came the parties aforesaid by their counsel aforesaid, and the motion for a new trial and for judgment on point reserved having been argued, the court hold the same under advisement.

And thereupon afterwards, to wit, on the 26th day of October, A. D. 1880, the court having duly considered the motion for a new trial, file the following reasons for granting the same, to wit:

In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit.

Anderson, receiver, &c.,
vs.
The Philad'a Warehouse Co.

Whether Mr. Henry, as president of the defendant company, had authority from the company to accept the transfer of the bank stock for it, or whether the company subsequently accepted the
20 transfer made to Mr. Henry as president, should have been submitted to the jury upon the evidence. Although such

submission was not (directly at least) asked for on the trial by either party, the case cannot properly be disposed of without this question being passed upon by the jury; and the cause should go back for this purpose. A new trial is therefore granted.

(Endorsed:) No. 25; October sess., 1879: C. C. U. S., E. D. of Pa.; Anderson, receiver, &c., *vs.* Philad'a Warehouse Co.; reasons of the court for granting a new trial; filed October 26, 1880.

21 And thereupon it is ordered that a jury come to try the issue joined in this cause.

And thereupon afterwards, to wit, on the 12th day of April, A. D. 1881, came the parties aforesaid, and the jurors of the jury aforesaid being called, came, to wit:

1. Charles Shivers.
2. Edward J. Altemus.
3. Francis S. Bacon.
4. Moses T. Young.
5. Jacob L. Stadelman.
6. William Cooper.
7. Isaac H. Kay.
8. Thomas Graham.
9. Lucius P. Thompson.
10. Jacob Pensinger.
11. Conrad O. Zimmerman.
12. Lindley Haines.

Who are duly empanelled, returned, chosen, tried, and sworn or affirmed to speak the truth in the issue joined, &c.

And thereupon the court, by the Honorable William Butler, judge, charge the jury as follows, to wit:

22 U. S. circuit court, Butler & McKennan, j j.

Henry J. Anderson, receiver,
vs.
The Philadelphia Warehouse Co.

WEDNESDAY, *April* 13, 1881.

Stenographic Report of Oral Charge of Court.—Butler, J.

GENTLEMEN OF THE JURY: I shall not detain you by any further reference to the law or facts of this case than shall seem to me to be necessary in view of the information you have already received during the progress of the trial. The plaintiff has presented the court with a number of points upon which we are requested to charge you. The only one, however, of the number that I esteem it necessary to notice particulary is the seventh. The others are disallowed. The instruction asked for is refused except to the extent that it may be given in the general charge. The seventh point is in this language: "After knowledge of the transfer of the 450 shares of
23 stock to T. Charlton Henry, president, came to the defendants, it was their duty to repudiate said transfer if the same was made without their knowledge or consent." I will not say that in terms; but will say that if when the company received knowledge of the transfer to T. Charlton Henry, president, it had failed

to manifest its disapproval of the transfer to its president, such failure would be evidence of acquiescence in and assent to what was thus done. But in saying this it is my duty also to say to you that within three or four days of the time when Mr. Henry received information of this transfer the secretary of the company and Mr. Henry informed Mr. Blumer in effect that the company could not accept a transfer of the stock to it.

The defendant has also presented points upon which the court is asked to charge you. The liability invoked here is a statutory one. We are requested to say—

24 First: "The registered owner is made liable without regard to his real interest." That is true.

Second: "The actual owner is liable irrespective of the name of the person in whose name he sees fit to have his stock registered." That is also true.

Third: "The pledgee is never liable as such." That is so. The man for whose benefit bank stock is pledged, unless it is transferred to him so that he becomes a registered owner, is not liable. He is not liable simply because it is pledged for his benefit without a transfer to him, and a registration in consequence.

Fourth: "To make the pledgee liable, stock must be held in his name." That is what the court has just said to you. "No one is liable because he was once a registered owner, if he has ceased to be so before insolvency exists." That is true also; but it must not be misunderstood. "No one is liable because he was once an owner, if he has ceased to be an owner." That is true; but a man does not always cease to be an owner because he has transferred

25 his stock. If he has transferred it to another for his own benefit, he does not cease to be the owner. He is still owner, and in such case he continues to be liable as owner under the banking act.

The sixth, seventh, eighth and ninth points, abstractly considered, are true; but in the judgment of the court the statement of the law contained in them is not relevant to the facts in this case.

Tenth: "If the warehouse company, when first informed that the shares had been transferred to their president, declined accepting the transfer, not desiring to be themselves the registered owners, they are not liable in this action." This goes to the marrow of the inquiry required at your hands. I answer it by saying that if the warehouse company, when first informed that the shares had been transferred to their president, declined accepting the transfer and did not subsequently accept it, they are not liable.

26 The eleventh point cannot be affirmed. If the company did accept the transfer made to Mr. Henry—that is, if the company did authorize Mr. Henry to take this transfer to himself, as president for it, or after it was taken, even if without authority, they assented to his holding it for them, then their transfer of it subsequently to McCloskey, and afterwards to another, to be held for their benefit, would not discharge their liabilities as owner—liabilities re-

sulting from an authorization of Mr. Henry to take it for them, or an assent to his holding it for them.

The twelfth point is negatived.

Thirteenth: "If, when the insolvency of the bank first existed, or was anticipated, the stock stood in the name of a trustee, who was to hold it to secure a loan, subject to that pledge as trustee for Blumer & Company, the warehouse company is not liable in this action." We cannot so charge you in case you find that the
27 warehouse company did become owner of the stock by authorizing Mr. Henry to take it for the company, or subsequently ratifying his act by assenting to his holding it for the company. If the warehouse company thus became the owner, the transfer of it subsequently, although the bank at that time was neither insolvent nor showing signs of insolvency, being but a partial transfer—a transfer for their benefit—a qualified transfer—would not relieve them of the responsibilities that attach to ownership.

It appears from the evidence, and in view of your familiarity with the facts it seems to be unnecessary to repeat them to any extent, that the defendants were engaged in the business of making loans; that they made a loan to Mr. Blumer in the month of November, 1871; that at that time Mr. Blumer, as collateral security for the loan, transferred to Mr. Henry, as president, certain gas stock
28 which he held. Mr. Henry held the gas stock in his name as president for a considerable length of time. Subsequently in the month of December Mr. Blumer, without, so far as appears, any conference with Mr. Henry or any one else on the subject of transferring the particular bank stock here in question, made a transfer to Mr. Henry as president, or pres., of 450 shares of bank stock, and forwarded the certificate to him, having the transfer registered upon the books of the bank. It reached Mr. Henry on the 28th day of December, just before new year. Mr. Henry consulted such directors of the company constituting a part of the executive board as he met with, for there was no meeting, and answered through the secretary to Mr. Blumer that this certificate could not be received in this way; in effect, that the company was not willing to hold this stock thus, apparently in its own name. Mr. Henry afterwards explained
29 their reason for sending the certificate back. The stock having been transferred to Mr. Henry, he as president using the name that was found in the body of the certificate, made a retransfer of the stock and sent it back to Mr. Blumer. That transfer was attested by the secretary of the company and the seal of the company was placed upon it. A few days later, in answer to an inquiry made by Mr. Blumer, Mr. Henry informed Mr. Blumer of the reason why they had rejected or declined to accept it; which was that they were unwilling to take upon themselves the responsibility of registered owners. That they had a perfect right to do. They were willing to accept this stock as collateral, but they had a right to refuse to be made responsible for assessments that might thereafter be made upon

it. They were not about to become the actual owerers of the stock. The ownership remained in Mr. Blumer. They were merely
30 to have a pledge of it as collateral security for Mr. Blumer's indebtedness to them. They therefore said subsequently, through Mr. Henry, when assigning reasons why they would not accept it, that it was because they were not willing to assume the responsibility that probably attaches to the owner. It was their right to have this stock which was pledged to them for the loan they made transferred out of Mr. Blumer for their protection, to any one whom they might designate or whom Mr. Blumer might designate or assent to, who would hold it for the benefit of the owner and for the benefit of the pledgee. Such a transfer to a third person to hold for the benefit of the owner, Blumer, and the benefit also of the warehouse company, whose money Mr. Blumer had borrowed, would not make the defendants here liable as owners. They desired to avoid such
31 liability, and, therefore, they informed Mr. Blumer that they declined, as we are now told, and as the letters indicate, and that they were unwilling to be placed in the position of owners. They wanted the benefit of the protection to be afforded by the pledge of the stock, and, therefore, they desired it transferred by Mr. Blumer to somebody, and named an individual, so that it might be held for their protection. This they had a perfect right to do.

The claim of the plaintiff is, that the defendant took this transfer in the name of its president; in other words, that the defendant authorized its president to receive the transfer of stock to hold for it, or if it did not in advance authorize him to receive it, it afterwards affirmed his act and assented and agreed for a time to receive and hold it in that way. If that allegation is made out, the defendants here are to be treated as the registered owners through their president, Mr. Henry, liable
32 in this suit, and not relieved by the transfer they subsequently made. If, on the other hand, that allegation is not true—if you are not satisfied that the warehouse company either authorized Mr. Henry in advance to take this stock for it and hold it for it, or after he had taken it did not assent and agree that he should hold it for it— if that is not made out to your satisfaction, the plaintiff cannot recover, and your verdict will be for the defendant.

It would be waste of time to undertake to discuss and explain the law to you, for the reason that there is no other issue in the case than the one I have stated—the single question whether the defendant company authorized Mr. Henry in advance to take this stock for it, or subsequently after the transfer assented and agreed that he should hold it for it. I instruct you as fully upon the subject of the
33 law as it is necessary to do when I say to you that if you find this issue against the plaintiff your verdict will be against him, and if you find it in favor of the plaintiff your verdict will be for him.

Now, gentlemen, upon what is it that the plaintiff relies to support the issue upon his part? It is an inference he asks you to draw from

the facts that the company either authorized Mr. Henry to take the transfer of stock for it as its executive officer, or that after the stock was thus transferred the company assented and agreed that he should so hold it. There is no direct evidence of either authority or assent, and if the case is made out for the plaintiff it must be made out by reason of inferences legitimately arising from the facts tending to show such authority or assent.

The plaintiff refers to the dealings between Blumer and this company, and to the fact that prior to the transfer of this bank
34 stock there had been a transfer of gas stock, and that that stock was held by Mr. Henry in his name as president, as the court understands for a considerable time, there being no objection to that, and no rejection of it. The inference does not follow legitimately, however, that the company might be willing that its president should take bank stock and hold it for the company because it assented to his taking gas stock and holding it for its benefit, if it did so assent, because the holding of gas stock entailed no such liability on the company as arises from the holding of bank stock. The plaintiff further refers to the fact that the defendant company apparently, at least, exercised control over this stock; apparently admitted ownership by a subsequent transfer of the stock in the name of its president, attested by its secretary, who used the seal. This is a significant fact. If this apparent exercise of control over
35 the stock, a control that ordinarily appertains only to ownership, stood unexplained, it would justify the inference which the plaintiff asks you to draw: that the company either did authorize Mr. Henry to take the stock for it in his name as its executive officer, or, after he had taken it, assented and agreed that he should so hold it. But while such an inference unexplained would be justifiable if you chose to draw it, it is subject to explanation. If you believe Mr. Henry, who was called as a witness, the transfer is explained in such a way that the inference is repelled, and you cannot find that the defendant authorized the stock to be taken for it and held for it in his name, or at any time assented and agreed so to hold it, or that it might be so held. I repeat, it is the judgment of the court that if you believe Mr. Henry there is nothing in this case that will justify a verdict for the plaintiff.

The inference upon which the plaintiff must rely
36 cannot be drawn if you believe him. Do you believe him?

He tells you that when this stock was sent down he did not anticipate its coming, and that when he saw it was in his name he was dissatisfied. He conferred with the directors whom he met. They viewed it as he did, and resolved at once that it should go back; that the company could not and would not hold it, would not accept it and thus place themselves in the position of registered owners, because they were not willing to assume the responsibility of such owners. They never intended to become the actual owners; they never were the actual owners. As I have before said, the only interest they ever had and ever intended to accept was that of hav-

ing it pledged as security for the loan they had made to Mr. Blumer. They were not willing, therefore, as Mr. Henry testifies, to have the certificate made directly to them or their executive
37 officer, so as to make either liable for the assessment or to raise a question respecting such liability. Mr. Henry tells you this, and he tells you that the certificate was consequently sent back, and that the transfer which was made by him and attested by the secretary, was made for the purpose of getting rid of the appearance of ownership; that it was not intended as an exercise of the authority of an owner, but was to get rid of an appearance of ownership that had been improperly forced on the company. If that is true, the plaintiff has no case. It is for you to say whether Mr. Henry is worthy of belief. He is not contradicted directly by anybody. Noboby has called his character in question. He was corroborated to a certain extent by Mr. West, by Mr. Madeira's letter, and also by correspondence referred to.

I will not dwell upon the case. I repeat to you that in the absence of the testimony of Mr. Henry, the absence of the letters and explanations appealed to by the defendant, you might,
38 from the dealings between the parties and the transfer made by the company, attested by the secretary with the seal, unexplained, if you thought it was justifiable, infer that the company had authorized Mr. Henry to take this stock for it, or had agreed or assented to hold it in his name; but with the testimony of Mr. Henry, if you believe it, you cannot draw any such an inference. The case therefore turns upon what you think of his testimony. I have no hesitation in saying to you that it is my judgment, and I think it is the judgment of the court, that there is nothing here which would justify a disregard of the statements made by Mr. Henry. Judge McKennan states in your hearing that he assents to that view of the case.

39 And afterwards, to wit, on the 13th day of April, A. D. 1881, the jurors aforesaid, upon their oaths or affirmations aforesaid, respectively do say that they find for the defendant.

40 And thereupon afterwards, to wit, on the 18th day of April, A. D. 1881, the plaintiff, by his attorneys, comes into court here and moves the court for a new trial, and files reasons in support therof, which being read, is as follows, to wit:

U. S. C. C., Oct. sess., 1879.

Anderson, receiver, &c., *vs.* Phil'a Warehouse Co. } No. 25.

And now, to wit, April 18th, 1881, plaintiff moves for a new trial, and assigns as reasons therefor:

1. That the court erred in instructing the jury as follows: "I repeat, it is the judgment of the court that if you believe Mr. Henry,

there is nothing in this case that will justify a verdict for the plaintiff."

2. That the court erred in instructing the jury as follows: "I have no hesitation in saying to you that it is my judgment, and I think it is the judgment of the court, that there is nothing here which would justify a disregard of the statements made by Mr. Henry."

41 (Endorsed:) October sess., 1879; No. 25; Anderson *vs.* Warehouse Co.; motion and reasons for new trial; filed April 18, 1881.

And thereupon afterwards, to wit, on the 20th day of April, A. D. 1881, the plaintiff, by his attorneys, comes into court here and moves the court for leave to withdraw his motion for a new trial.

And thereupon, on the day and year last aforesaid, the court granted to the plaintiff leave to withdraw his motion for a new trial.

And thereupon afterwards, to wit, on the 25th day of June, A. D. 1881, came the defendants, by their attorneys, and move the court for judgment; and

Thereupon it is ordered, adjudged, and decreed that judgment be entered on the verdict in favor of the defendants and against the plaintiff.

42 Whereupon judgment is entered accordingly.

43 In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit.

Henry J. Anderson, receiver of the First National Bank of Allentown,
vs.
The Philadelphia Warehouse Company.

Know all men by these presents, that we, Henry J. Anderson, principal, and John Rupp and James B. Deshler, of Allentown, county of Lehigh and state of Pennsylvania, are held and firmly bound unto the Philadelphia Warehouse Company in the sum of five hundred dollars ($500), lawful money of the United States of America, to be paid to the said Philadelphia Warehouse Company, their certain attorney, successors or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this thirtieth day of July, A. D. 1881.

44 Whereas lately, at a circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a suit depending in said court between Henry J. Anderson, receiver of the First National Bank of Allentown, plaintiff, and the Philadelphia Warehouse Company, defendants, judgment was rendered against the said Henry J. Anderson, receiver, &c.; and the

said plaintiff having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit:

Now the condition of this obligation is such, that if the said Henry Anderson, receiver as aforesaid, shall prosecute his writ of error and answer all costs and damages if he fails to make his plea good, then this obligation to be void; else to remain in full force, virtue and effect.

HENRY J. ANDERSON. [L. S.]
JOHN RUPP. [L. S.]
JAMES B. DESHLER. [L. S.]

Sealed and delivered in presence of us.
THOMAS STECKEL.
A. G. DUVALT.

Approved August 30, 1881.

Attest: SAMUEL BELL, *Clerk.*

45 (Endorsed:) No. 25; Oct. sess., 1879; U. S. C. C.; Anderson, receiver, *vs.* Phil'a Warehouse Co.; bond $500, on writ of error; filed August 30, 1881.

46 Be it remembered, that in the term of October, A. D. 1879, came Henry J. Anderson, receiver of the First National Bank of Allentown, into the circuit court of the U. S. for the eastern district of Pennsylvania, and impleaded the Philadelphia Warehouse Company in a certain plea of trespass on the case, &c., in which the said plaintiff declared (prout narr,) and the said defendant pleaded (prout pleas.) And thereupon issue was joined between them.

And afterwards, to wit, at a session of said court held at the city of Phila. aforesaid, before the Honorable William McKennan, judge of the U. S. circuit court, and the Honorable William Butler, judge of the U. S. district court, on Tuesday, the twelfth day of April, A. D. 1881, the aforesaid issue between the said parties came to be tried by a jury of the said district for that purpose duly impanelled (prout list of jurors,) at which day came as well the said plaintiff as the said defendant, by their respective attorneys; and the jurors of the jury aforesaid impanelled to try the said issues, being also called, came, and were then and there in due manner chosen and sworn, or affirmed, to try the said issue; and upon the trial the counsel of the said plaintiff called—

47 HENRY J. ANDERSON, sworn and examined by Mr. HARVEY:

Q. You are a receiver of the First National Bank of Allentown?

A. Yes, sir.

Q. When were you appointed?

A. June 1st, 1878.
Q. You were appointed to succeed Mr. Kennedy?
A. Yes, sir.
Q. Do you remember when his appointment occurred?
A. April 15th, 1878.
Q. As receiver, did you take possession of the books and assets of the bank?
A. Yes, sir; I did.
Q. Have you the stock ledger of the bank with you?
A. Yes, sir. (Producing the same.)
Q. The other book is the certificate book, is it not?
A. The stock certificate book.
Q. Turn to the stock ledger, and tell us whether William Kern is a registered stockholder.
A. Whether he is?
Q. Whether he was?
A. Yes, sir; he was some time.
48 Q. On April 17th, 1864, how many shares of stock were registered in his name?
A. 490 shares.
Q. Up to what date did he continue to hold those shares?
A. Up to December 27th, 1871.
Q. Then what became of them?
A. They were transferred to T. Charlton Henry.
Q. How many shares?
A. 450 shares. That is the transfer of Kern's account.
Q. In the stock ledger was there an account opened in the name of Henry, transferee?
A. Yes, sir.
Q. What is that?
A. T. Charlton Henry, pres.
Q. When the transfer to Henry was registered in the stock book it was registered "T. Charlton Henry, pres., 450 shares.
A. Yes, sir; discharged December 27th, 1871, from William Kern, 450 shares.
Q. What is the number of the certificate of transfer?
A. That I will have to look up. Certificate No. 3 is a certificate issued to William Kern for 490 shares.
49 Q. Dated when?
A. The date is not filled in. In none of the first certificates was the date filled in.
Q. Does that bear a transfer on the back of it?
A. Power of attorney; signed in blank William Kern.
Q. And the certificate returned to the bank?
A. Yes, sir; the certificate returned to the bank.
Q. Turn to the certificate No. 85.
A. Certificate No. 85; certificate in the body is "T. Charlton Henry, esq., pres., for 450 shares."
Q. Dated when?

A. Dated December 27, 1871.

Q. Is there any endorsement upon that certificate?

A. There is a power of attorney filled out—the transfer.

Q. Dated when?

A. Dated January 3d, 1872.

Q. Does that transfer appear to be done under the seal of the Philadelphia Warehouse Company?

A. Yes, sir; by Henry to McCloskey, 450 shares signed
50 T. C. Henry, pres.; it may be pres. with the T off; I can't tell. It is either pres., or prest.

Q. It is attested by whom?

A. It is attested by S. L. Madeira, secretary, with the seal of the warehouse company attached.

Q. Does the stock ledger show that Dennis McCloskey became a registered stockholder?

A. Yes, sir.

Q. For how many shares?

A. 450 shares.

Q. Were those shares transferred by the warehouse company?

A. Yes, sir; on the 10th of January, 1872, the transfer was made on the books.

Q. Was there a certificate issued to him?

A. Yes, sir; No. 86 was issued to him on the 10th of January, 1872, for 450 shares.

Q. Has that certificate been returned to the bank, and have you it here?

A. Yes, sir.

Q. Is there an endorsement upon it?

A. There is a power of attorney attached to it, filled out,
51 transferring 450 shares, constituting H. F. West his attorney.

Q. It is transferred in blank; a power of attorney to West?

A. Yes, sir.

Q. Give us the date of that?

A. That is dated the 3rd of January, 1872, before the date of the certificate.

Q. You have that transfer, have you?

A. Yes, sir.

Q. Then was there a certificate issued to Francis Ferris?

A. There was one issued to him.

Q. Do you know the date?

A. Certificate No. 118.

Q. Dated when?

A. Dated July 15th, 1875, from D. McCloskey to Francis Ferris, for 450 shares.

Q. That certificate has not been returned to the bank?

A. No; it has not.

Q. It was receipted for by whom?

A. "Received certificate, 450 shares; Harry F. West."

Q. On the stock ledger, was the name of Ferris put among the list of stockholders?

A. Yes, sir; the name of Ferris appears, charged for 450
52 shares, July 15th, 1875.

Q. Did the controller of the currency order an assessment?

A. Yes, sir; ordered and made an assessment.

Q. Do you recollect the date of it?

A. I think the 10th of May, 1878, it was made.

Q. How much upon each share?

A. Twenty per cent. on the par value. The par value was $100; twenty dollars on each share.

Cross-examined by Mr. McMURTRIE:

Q. Mr. Kern was a member of the firm of Blumer & Co., was he not?

A. I believe he was.

Q. When was the insolvency of the bank first ascertained to exist?

A. On or about the 15th day of April, 1878.

Q. When did its actual insolvency begin?

A. O, I couldn't tell that from any certain knowledge. I suppose some years previous, perhaps—some time previous.

Q. You have never actually ascertained that fact? I mean to say you have never made that point a point of investigation,
53 when the insolvency began?

A. Not for any special purpose; no.

Q. When did this bank stop the paying of dividends?

A. I think in the latter part of 1876. I think they paid their last dividend in December, 1876.

Q. Had they paid dividends in 1871, 1872, 1873, 1874, 1875 and 1876?

A. My recollection is that they have; I couldn't tell without referring to the books.

Q. Havn't you got the material here to tell us?

(Objected to. Objection withdrawn.)

A. Yes, sir.

Q. Turn to the book and show us to whom these dividends were paid; state the dates, the persons and the amounts, and to whom the dividends were paid?

A. Each and every dividend?

Q. Yes, sir; from the time this transaction begins; from December, 1871.

The WITNESS: Dividend No. 8 is the first. I cannot give the date of the payment.

54 Q. The date of the declaring of the dividend is just as good?

A. I haven't got it here; May 28th, 1872, William Kern. The dividend of 490 shares was paid to William Kern.

Q. How much?

A. $2,940.

Q. Did he receive the dividend on the 490 shares?

A. Yes, sir; dividend No. 9, William Kern, on 500 shares, $3,000; no date. This does not give the date of the declaring of the dividend. It merely gives the date of the receipt.

Q. What is the time of the receipt?

A. It is not filled in here. It is on or about December, 1872, or January, 1873; every six months. The next is dividend No. 10, William Kern, 500 shares, $3,000. "By whom received: William Kern, William H. Blumer & Company, October 27th, 1873."

Dividend No. 11, William Kern, 500 shares, $2,500; credited W. H. B. & Co., December 5th, 1873.

Q. That means transferred to their credit?

55 A. Yes, sir; I judge that. The next is dividend No. 12, William Kern, 500 shares, $3,000; credited simply July 11th; no year to it.

Dividend No. 13, William Kern, 500 shares, $2,500; credited December 21st, 1874.

Dividend No. 14, 500 shares, $2,500; credited June 10th.

Dividend No. 15, William Kern, 500 shares, $2,500; credited 11, 24.

Q. It doesn't say credited to whom?

A. No, sir; it doesn't say.

Dividend No. 16, William Kern, 500 shares, $2,500; credited 5, 19, '76.

Dividend No. 17, William Kern, 450 shares, "Warehouse Company," in pencil, 500 shares, $2,500; credited 7, 23.

The COURT:

Q. Who was this paid to?

A. Just simply says "credited." That was the last one: 7, 23. I suppose it means 1876.

Mr. MCMURTRIE:

Q. These dividends were credited either to Kern or to Blumer & Company, were they not?

56 A. I couldn't tell that. I haven't got the ledger here. I couldn't say.

Q. Haven't you got a book that would show that?

A. No, sir; no book that would show that.

Q. Have you ever seen the name of Mr. Henry on your books—the books of the bank?

A. On any of the books?

Q. Yes, sir.

A. No, sir; I think not.

Q. Have you ever seen the name of the warehouse company?

A. No, sir; I think not. So far as my recollection goes, I have not.

Q. Never found any account there showing that these things had been carried to their credit, did you?

A. No, sir; I don't think there is. I never had any occasion to look it up; I don't know.

Q. You said on a former occasion, and I will ask you whether or not at that time you didn't know this fact, that they were all receipted for on the dividend book by William Kern or by William H. Blumer & Company.

A. On the dividend book, did I say?

57 Q. I think you said they are all receipted for on the dividend book either by William Kern or William H. Blumer & Company. All I want to know is whether that was not from your knowledge that these things had been carried on to the credit of that man or that firm?

A. I couldn't say with regard to every dividend. My impression is that most of the dividends were carried to the credit of William Kern or William H. Blumer & Company, as far as my knowledge goes.

Mr. JUNKIN:

Q. Apart from the seal of the warehouse company on the back of certificate No. 85, does the name of the company appear anywhere on the books or papers of the bank, either as a shareholder or in any other way?

A. That is, the warehouse company?

Q. Yes, sir; apart from the endorsement on the back of one of the certificates?

A. It only appears in some accounts, I believe, that they have.

Q. Where?

58 A. In the stock ledger; some outside accounts; something of that kind; some transactions they may have got through, but nothing in reference to the stock.

Q. Does the same warehouse company appear on the stock ledger or the dividend book, or in any book or paper with reference to stock, except on the book and that one paper transferring the shares?

A. No, sir; it only appears in the dividend book in pencil: "450 shares warehouse company." That is the last dividend. That is the only instance in which the name of the warehouse company appears in any way, with the exception of the seal on the certificate.

Q. You don't know when that pencil "450 shares" was put in?

A. No, sir; I don't know anything about it.

Q. Nor in whose handwriting?

A. No, sir; only from similarity to other handwriting.

Q. Do you find any power of attorney authorizing the transfer from Kern to Henry of these shares?

59 A. Henry named in the power?

Q. Yes, sir.

A. No, sir.

Q. The certificate to Kern for 490 shares you do find, and the transfer of 450 of them to T. C. Henry, pres.?

A. Yes, sir.

Q. Is there any transfer of the 40 other shares by Kern to any one or any certificate issued to him for them?

A. That I couldn't say without looking it up.

Mr. McMURTRIE:

Q. They could never have been transferred?

A. No, sir.

Mr. JUNKIN:

Q. The question is whether there is any transfer of those 40 shares or whether any certificate was ever issued to him for them.

A. No, sir; there was no certificate made for 40 shares.

Q. Then was no certificate issued to him for those 40 shares?

A. No; it is endorsed here "no certificate made for 40 shares."

60 Mr. McMURTRIE:

Q. There was one issued for 490?

A. Yes, sir.

Q. And he transferred 450?

A. Yes, sir; leaving 40.

Mr. JUNKIN:

Q. Look at that stub margin. On the stub margin the transfer of the 450 shares is from William Kern to T. Charlton Henry, is it not—No. 85?

A. From William Kern to T. Charlton Henry.

Q. Without the addition of any word?

A. Without the addition of any word.

Q. And it is receipted for by W. H. Blumer for T. C. Henry?

A. Yes, sir; T. C. Henry per William H. Blumer.

Q. And on stub margin of the certificate issued to Dennis McCloskey, the receipt is signed W. H. Blumer for Dennis McCloskey, isn't it?

A. It is.

Q. Is there any dividend on these 450 shares declared to or paid to McCloskey, Henry, or Ferris?

A. No, sir.

Q. Or the warehouse company?

61 A. No, sir; the books don't show anything; I don't know.

Q. That is all you can say?

A. I don't know anything of my own knowledge.

Mr. HARVEY:

Q. Blumer & Co. and William Kern were depositors in the First National Bank of Allentown?

A. Yes, sir.

Q. What you mean by crediting the account there appears to their credit in the deposit ledger of the bank?

A. Yes, sir.

Q. The only book of the bank that contains the list of the stockholders is the stock ledger, is it not?

A. That is all; yes, sir.

Q. And the certificate book is made up from the stock ledger?

A. Yes, sir.

Adjourned to 10 o'clock, April 13.

62 WEDNESDAY, *April* 13, 1881.

Plaintiff calls on defendant to produce certificate issued to Francis Ferris, dated July 15th, 1875, and with it the power of attorney executed by Ferris, in blank, dated July 16, 1875.

(Paper produced by defendants.)

Plaintiff offers in evidence the following entries from the stock ledger, viz:

Dr.	Shares.	Cr.	Shares.
Willaim Kern		1863.	
1871.		Nov. 21, subscription 1	325
Dec. 27, T. Charlton Henry	450	1864.	
		Apr. 7, increase	165
		1872.	
		May 6, W. H. B. & Co	10
T. Charlton Henry, pres	Shares.	Phila.	Shares.
1872.		1871.	
Jan. 10, D. McCloskey	450	Dec. 27, W. Kern	450
Dennis McCloskey		1872.	
1875.		Jan. 10, T. C. Henry	450
July 15, F. Ferris	450		
1875.			
F. Ferris	Phila.		
		1875.	
		July 15, F. Ferris	450

63 Also certificate No. 3, as follows:

No. 3. 490 shares.

No. transfer.
No. certificate, 3.
From
To Wm. Kern
For 490 shares.
, 18 .

Rec'd certificate for 490 shares of 1 nat. stock.
WM. KERN.

The First National Bank of Allentown, Pa.
Lehigh county, Penn.

Authorized capital, $500,000.

This is to certify that Wm. Kern is entitled to four hundred and ninety shares in the capital stock of the First National Bank of Allentown, Pa., transferable only on the books of the bank in person or by attorney on the surrender of this certificate.

(Stamp.) Allentown, Pa. 18 .
T. H. MOYER,
Cashier.
W. H. BLUMER,
Pres't.

For valued received hereby sell, assign, and transfer to shares of the within-mentioned stock, and do hereby constitute and appoint attorney to transfer the same on the books of the bank.

64 Witness hand and seal this day of , A. D. 18 .

WM. KERN. [SEAL.]

Also certificate No. 85, as follows:

No. 85.
No. transfer.
No. certificate, 85.
From Wm. Kern
To T. Charlton Henry
For 450 shares.
Dec. 27, 1871.
Rec'd certificate for 450 shares of 1 nat. stock.
T. C. HENRY,
Per W. H. BLUMER.

450 shares.
The First National Bank of Allentown, Pa.
Lehigh county, Penn.

Authorized capital, $500,000.

This is to certify that T. Charlton Henry, esq., pres., is entitled to four hundred and fifty shares in the capital stock of the First National Bank of Allentown, Pa., transferable only on the books of the bank in person or by attorney on the surrender of this certificate.

(Stamp.) Allentown, Pa., Dec. 27, 1871

J. A. BLUMER,
Cash'r.
W. H. BLUMER,
Pres't.

65 For value received I hereby sell, assign, and transfer to Dennis McCloskey four hundred and fifty shares of the within-mentioned stock, and do hereby constitute and appoint Chas. A. Barnes my attorney to transfer the same on the books of the bank.

Witness my hand and seal of company this 3rd day of January, A. D. 1872.

T. C. HENRY, *Pres't.*
S. C. MADEIRA, *Sec.*

Attest:
[Seal of Phila. Warehouse Co.]

Also certificate No. 86, as follows:

No. 86.

No. transfer.
No. certificate, 86.
From T. Charlton Henry
To Den. McCloskey

450 shares.
The First National Bank of Allentown, Pa.
Lehigh county, Penna.

For 450 shares.
Jan. 10, 1872.
Rec'd certificate for 450 shares of
W. H. BLUMER,
For D. McCLOSKEY.
66

Authorized capital, $500,000.

This is to certify that Dennis McCloskey is entitled to four hundred and fifty shares in the capital stock of the First National Bank of Allentown, Pa., transferable only on the books of the bank in person or by attorney on surrender of this certificate.

(Stamp.) Allentown, Pa., Jan. 10, 1872.

J. A. BLUMER,
Cash'r.
W. H. BLUMER,
Pres't.

Know all men by these presents, that I, Dennis McCloskey, for value received, have bargained, sold, assigned and transferred, and by these presents do bargain, sell, assign and transfer unto —— —— four hundred and fifty shares of the capital stock of the First National Bank of Allentown, Pa., standing in my name on the books of the said bank, and do hereby constitute and appoint H. F. West my true and lawful attorney irrevocable, for me and in my name and stead, but to use, to sell, assign, transfer and set over all or
67 any part of said stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all the said attorney or substitute or substitutes shall lawfully do by virtue hereof.

In witness whereof I have hereunto set my hand and seal the 3rd day of January, 1872.

[SEAL.] DENNIS McCLOSKEY.

Sealed and delivered in the presence of—
WM. H. JACKSON.

Also certificate No. 118, as follows:

No. 118. 450 shares.

No. transfer.
No. certificate, 118.
From D. McCloskey
To Francis Ferris
For 450 shares.
July 15, 1875.
Rec'd certificate for 450 shares of
HARRY F. WEST.
68

The First National Bank of Allentown, Pa.,
Lehigh county, Penna.

Authorized capital, $500,000.

This is to certify that Francis Ferris, esq., is entitled to four hundred and fifty shares in the capital stock of the First National

Bank of Allentown, Pa., transferable only on the books of the bank in person or by attorney on the surrender of this certificate.

Allentown, Pa., July 15, 1875.

J. A. BLUMER,
Cash'r.
W. H. BLUMER,
Pres't.

Know all men by these presents, that I, Francis Ferris, for value received, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto —— —— four hundred and fifty shares of the capital stock of the First National Bank of Allentown, standing in my name on the books of the said bank, and do hereby constitute and appoint true and lawful attorney irrevocable, for me and in my name and stead, but to use, to sell, transfer, and set over all or any part of the said stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute
69 with like full power, hereby ratifying and confirming all that my said attorney or his substitute or substitutes shall lawfully do by virtue hereof.

In witness whereof I have hereunto set my hand and seal this 16th day of July, 1875.

[SEAL.] FRANCIS FERRIS.

Sealed and delivered in the presence of—
COLMAN C. COOPER, JR.

This latter paper is the one produced by defendant on call.

Also the stub margins and transfers offered in evidence.

Also the certificate of the controller of the treasury, dated May 10, 1878, making a call for an assessment of 20 per cent., offered in evidence.

Also the commission of Henry J. Anderson as receiver, dated May 18, 1878, offered in evidence.

70 FRANCIS FERRIS sworn and examined by Mr. HARVEY:

Question. You live in Philadelphia?
Answer. Yes, sir.
Q. Are you in the employ of the defendant?
A. Yes, sir; the Philadelphia Warehouse Company.
Q. You have been for how long?
A. Since 1872.
Q. How old were you in 1875?
A. 20 years old.
Q. Did you know Dennis McCloskey?

For 450 shares.
Jan. 10, 1872.
Rec'd certificate for 450 shares of
W. H. BLUMER,
For D. McCLOSKEY.
66

Authorized capital, $500,000.

This is to certify that Dennis McCloskey is entitled to four hundred and fifty shares in the capital stock of the First National Bank of Allentown, Pa., transferable only on the books of the bank in person or by attorney on surrender of this certificate.

(Stamp.) Allentown, Pa., Jan. 10, 1872.

J. A. BLUMER,
Cash'r.
W. H. BLUMER,
Pres't.

Know all men by these presents, that I, Dennis McCloskey, for value received, have bargained, sold, assigned and transferred, and by these presents do bargain, sell, assign and transfer unto —— —— four hundred and fifty shares of the capital stock of the First National Bank of Allentown, Pa., standing in my name on the books of the said bank, and do hereby constitute and appoint H. F. West my true and lawful attorney irrevocable, for me and in my name and stead, but to use, to sell, assign, transfer and set over all or
67 any part of said stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all the said attorney or substitute or substitutes shall lawfully do by virtue hereof.

In witness whereof I have hereunto set my hand and seal the 3rd day of January, 1872.

[SEAL.] DENNIS McCLOSKEY.

Sealed and delivered in the presence of—
WM. H. JACKSON.

Also certificate No. 118, as follows:

No. 118. 450 shares.

No. transfer.
No. certificate, 118.
From D. McCloskey
To Francis Ferris
For 450 shares.
July 15, 1875.
Rec'd certificate for 450 shares of
HARRY F. WEST.
68

The First National Bank of Allentown, Pa.,
Lehigh county, Penna.

Authorized capital, $500,000.

This is to certify that Francis Ferris, esq., is entitled to four hundred and fifty shares in the capital stock of the First National

Bank of Allentown, Pa., transferable only on the books of the bank in person or by attorney on the surrender of this certificate.

Allentown, Pa., July 15, 1875.

J. A. BLUMER,
Cash'r.

W. H. BLUMER,
Pres't.

Know all men by these presents, that I, Francis Ferris, for value received, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto —— —— four hundred and fifty shares of the capital stock of the First National Bank of Allentown, standing in my name on the books of the said bank, and do hereby constitute and appoint true and lawful attorney irrevocable, for me and in my name and stead, but to use, to sell, transfer, and set over all or any part of the said stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute
69 with like full power, hereby ratifying and confirming all that my said attorney or his substitute or substitutes shall lawfully do by virtue hereof.

In witness whereof I have hereunto set my hand and seal this 16th day of July, 1875.

[SEAL.] FRANCIS FERRIS.

Sealed and delivered in the presence of—
COLMAN C. COOPER, JR.

This latter paper is the one produced by defendant on call.

Also the stub margins and transfers offered in evidence.

Also the certificate of the controller of the treasury, dated May 10, 1878, making a call for an assessment of 20 per cent., offered in evidence.

Also the commission of Henry J. Anderson as receiver, dated May 18, 1878, offered in evidence.

70 FRANCIS FERRIS sworn and examined by Mr. HARVEY:

Question. You live in Philadelphia?
Answer. Yes, sir.
Q. Are you in the employ of the defendant?
A. Yes, sir; the Philadelphia Warehouse Company.
Q. You have been for how long?
A. Since 1872.
Q. How old were you in 1875?
A. 20 years old.
Q. Did you know Dennis McCloskey?

A No, sir.

Q. Did you purchase any shares of the stock of the First National Bank at Allentown from him or from anybody else?

A. No, sir.

Q. Is that your signature to this power of attorney (handing paper to witness)?

A. Yes, sir.

Q. Executed by you?

A. Yes, sir.

Q. Be good enough to state under what circumstances you signed this paper?

A. It was handed to me by an officer of the warehouse company and I signed it.

71 Q. Was it ever in your possession—the certificate?

A. No, sir.

Q. Was this certificate there at the time you signed it (calling witness' attention to paper attached)?

A. I don't recollect this paper at all.

Q. Was that all that took place between you and this officer of the company what you relate—asking you to sign this paper?

A. Yes, sir.

Q. At the time that this transaction took place were you a person of any means?

A. No, sir.

L. C. MADEIRA sworn and examined by Mr. HARVEY:

Question. Were you the secretary of the Philadelphia Warehouse Company in 1872?

Answer. I was.

Q. Be good enough to look at this certificate No. 85 and state whether or not that is your signature and that is the seal of the corporation defendant?

A. Yes, sir.

72 The COURT:

Q. What is that certificate?

Mr. HARVEY (to the Court): Certificate No. 85 from the warehouse Company to McCloskey. (To the witness): Did you know Dennis McCloskey?

A. We had a messenger in the office by the name of Dennis; I think his last name was McCloskey.

Q. Do you recollect his age in 1872?

A. I do not, sir.

Q. Was he not a boy?

A. He was an errand boy in the office.

Q. Was he a person of any means at all?

A. I shouldn't suppose he was.

Q. Would you know that he was under 21 years of age from his appearance?

A. My recollections are that he was.

Cross-examined by Mr. McMURTRIE:

Q. You have been asked whether that is your signature and the seal to a transfer of that stock; you know the certificate?

A. That is my signature; I haven't looked at the face of the certificate.

Q. You remember the certificate, do you not?

73 A. I have no recollection of it at this time, further than I know that that is my signature.

Q. What was the interest of the warehouse company in the stock represented in that certificate?

(Objected to as not cross-examination. Question withdrawn.)

Mr. HARVEY:

Q. Who was the president of the Philadelphia Warehouse Company in 1871–2–3–4–5–6 and 7?

A. Mr. Henry.

Q. T. Charlton?

A. Yes, sir.

Mr. Harvey states that as Mr. Blumer is out of the city he proposes to read his testimony, as follows:

WILLIAM H. BLUMER sworn. I caused to be transferred the 450 shares of the stock spoken of; they were transferred by Mr. Kern; they were transferred as collateral security for a loan from the warehouse company to W. H. Blumer & Co.

Cross-examined:

W. H. Blumer & Co. consisted of myself, Jesse Line, and
74 William Kern. We were bankers at Allentown. I was president and director of the bank and continued such down to the spring of 1877. Mr. Kern and Mr. Line and my son, J. A. Blumer, were also directors, and my son was cashier. Our business, I mean that of our firm, with the warehouse company commenced in the latter part of 1871, November or December. We had previously dealt with S. and W. Welsh. We went to them again, and Mr. J. Lowber Welsh, of that firm, took me to the warehouse company, of which he was a director, and introduced me to Mr. Henry, who was the president, and I negotiated for a loan from the company for our firm for what is known as banker's credit. We agreed to deposit securities with them as collateral, and sent down to them stocks in the gas company and bank stock as collateral, and got the money on them. We first sent down gas stock, and then
75 towards the end of December we sent down the bank stock. This bank stock was not considered the firm's, but was considered Mr. Kern's individually. I can't remember who requested us to transfer the stock to T. C. Henry. It was transferred by Mr. Kern to him, and I receipted on the stub margin of certificate book for it, and either sent it or took it to Mr. Henry. I received letters

from Mr. Madeira and Mr. Henry about it, but have not got them. (Copies of letters from L. C. Madeira to W. H. Blumer & Co., dated January 3, 1872; W. H. Blumer & Co., January 4, 1872, to T. Charlton Henry; and W. H. Blumer to T. Charlton Henry, January 10, 1872, shown witness.)

I have no doubt I received these letters and wrote these replies, and made the transfer to Dennis McCloskey in consequence.

I received the new certificate issued to Dennis McCloskey, and receipted for it on the stub margin of the certificate book, and enclosed in this letter of January 10, 1872, to Mr. Henry.

76 During all the time that the stock stood in the names of McCloskey and Ferris dividends were declared on the stock in the name of William Kern, and either he or our firm of W. H. Blumer & Co. got them.

The warehouse company never got any dividends, and never voted on the stock, and never took any part in the affairs of the bank in any way.

At any time that we had paid off the loan we would have gotten the stock back. No transfer of the stock could have been made without my knowledge.

Re-examined:

I don't remember Mr. West appearing to represent the stock. He came up after the failure. Blumer & Co. paid the interest on the loan all the time until their failure, which was in March, 1877. The loan may have been made before the transfer. I don't remember.

77 After our failure the bank went into the hands of new directors, and went into voluntary liquidation, and subsequently failed.

The plaintiff here closed.

Also letters reading as follows, offered in evidence:

"ALLENTOWN, PA., *April 7th*, 1877.

"PHILADELPHIA WAREHOUSE CO., *Philadelphia.*

"GENTLEMEN: You will please furnish us with the statement of account and whatever notes or other securities you may hold as collateral from this bank. Your early attention will oblige,

"Yours, truly,

"L. H. GROSS, *Cashier.*"

Also reply of the warehouse company, as follows:

"PHILADELPHIA, *April 9th*, 1877.

"L. H. GROSS, esq., cashier,

"*Allentown, Pa.*

"DEAR SIR: We have your favor of 7th inst. In reply would state that we do not hold any securities or notes from the First National Bank of Allentown as collateral.

78 "We have in our possession a certificate of stock in your bank for 450 shares, in the name of Francis Ferris, which we hold as collateral.

"Yours, truly,

"HENRY F. WEST, *Treasurer.*"

Also a letter of L. C. Madeira, secretary, to William H. Blumer & Company, as follows:

"*January* 3*d*, 1872.

"Messrs. WM. H. BLUMER & Co.,

"*Allentown, Pa.*

"DEAR SIRS: Herewith you have certificate for 450 shares of stock, No. 85, of the First National Bank of Allentown, in the name of T. Charlton Henry, president, which you will please have transferred and a new certificate issued in the name of Dennis McCloskey. The certificate when ready enclose to us. This morning we paid your draft, favor of Messrs. S. & W. Welsh, for $10,000.

"Yours, very respectfully,

"L. C. MADEIRA, *Secretary.*"

79 Also letter of January 4, 1872, as follows:

WM. H. BLUMER, President. J. A. BLUMER, Cashier.

The First National Bank of Allentown.

ALLENTOWN, PENN'A, *Jan'y* 4, 1872.

T. CHARLTON HENRY, esq., president.

To-day I received one remittance from your L. S. Madeira, to wit, certificate of stock for four hundred and fifty shares of the capital stock of the First National Bank of Allentown, with a request to assign the same and make a new certificate to Dennis McCloskey. I do not understand the nature of this transaction, and would respectfully ask you to give me explanation why the stock is to be transferred to a third party; and if it would be better to place other securities with you, such as gas stock, in cases where you pledge them without outsiders.

If my remarks seem improper, pardon me, for I only ask questions to gain wisdom.

Very respectfully,

80 WM. H. BLUMER,
for WM. H. BLUMER & CO.

Also reply to above, as follows:

JANUARY 6, 1872.

WM. H. BLUMER, esq., pres't.

DEAR SIR: I am in receipt of your favor of the 4th inst., and in reply would say that I am not surprised at your inquiry, since you were requested to have the certificate made out in my name. We

have no need to borrow any money, nor do we expect or intend to put this stock out of our hands, but the failure of one or two national banks lately led our directors to consider the clause in the national bank act which renders all stockholders liable in case of failure to pay up to the receiver the full amount of the stock in their name; and on this account we determine to have the certificates of national bank stock put in the name of Dennis McCloskey, who is the boy in our office, taking his power of attorney to transfer the same.

81 Hoping this explanation will prove satisfactory,

I am yours respectfully,

J. C. HENRY, *Pres't.*

(Plaintiff's rest.)

Mr. McMurtrie moves for a nonsuit, which motion was denied by the court.

Testimony on behalf of defendant.

Mr. Junkin offers in evidence a copy of the charter, dated May 13th, 1871, for the purpose of showing that they were not authorized to make a loan.

(Objected to. Offer withdrawn.)

T. CHARLTON HENRY sworn and examined by Mr. JUNKIN:

Q. Were you president of this company when this transaction took place?

A. Yes, sir.

Q. And continued to be so down to when?

A. The 1st of December of last year.

Q. You are not now connected with it except as a director?

A. That is all the connection I have with the company.

Q. Will you just go on and tell us in your own way your knowledge in regard to this transaction with Mr. Blumer; this par-

82 ticular certificate of stock, No. 85?

A. I had been but a few weeks the president of the Philadelphia Warehouse Company, when Mr. Lowber Welsh, one of our directors, came into the office, and with him a gentleman whom he introduced as William H. Blumer, a banker, of Allentown, in this state. Mr. Welsh said that he had known Mr. Blumer for a number of years; that he was a man of means; that he was engaged in various transactions in Allentown; and that Mr. Blumer desired to make a loan or a credit—desired to have a credit with the warehouse company to the extent of $30,000, for which he would deposit ample securities. Mr. Blumer stated that he had a large amount of securities; that he was the president of the Allentown gas company, and he owned a large amount of stock of that company; that he was the president of the First National Bank of Allentown, and that he held stock in that company; that he also had stock, I think,

83 of a concern—stock or bonds of a concern called the Jordan Manufacturing Company; and various securities he spoke of;

and I recollect that he said that he would give us the most ample security if were willing to open a credit upon our books with him of $30,000.

My impression is that there was a suggestion made that if these stocks which were spoken of were sent down to the company that it would be desirable to have them taken out of the name of the holders and put in the name of somebody else.

Q. The COURT (to the witness): The stocks to be held as collateral?

A. The WITNESS: The stock to be held as collateral. The stocks which Mr. Blumer said they owned—William H. Blumer & Company, and my impression is that there was a request made or a suggestion made, that if these stocks were to be sent to the warehouse company as the basis of this credit, they should be transferred from the name in which they were at that time—from William H.
84 Blumer & Company's name, as that was the name they were supposed to be in—to the name of somebody else for the company, and my impression further is that my own name was suggested.

After Mr. Blumer's visit, a few days after that, he either sent us or brought us down 50 shares of the Allen gas company's stock, which he assured us was worth $50,000, as the commencement of the securities which he proposed to deliver for this loan or credit. There was some advance made to him upon this credit, upon this $30,000; how much I am unable to say just now. I think it was on the 28th of December, a month after, more than a month, probably after the previous stock had been sent down, Mr. Blumer either brought or sent a certificate of bank stock; according to my recollection this is the certificate (certificate No. 85) which he brought or sent, and left with us as to be part of the securities which
85 should be held for this $30,000 credit. There was no discussion with regard to the matter that I know of. If it was sent with a letter, I have not been able to find any letter or reply to that letter.

The COURT:

Q. Did you give the date when it came to you?

A. It was received on the 28th, so far as I recollect. I think that has been in evidence before. Not being authorized to make any loans at all——

(Objected to.)

The COURT, (to the witness:) State what occurred.

The WITNESS: I took the first opportunity of consulting with the members of the executive committee or the board as to those securities, and they——

(Any conversation between him and any of the members of the board objected to unless they produce their minutes and show what action was taken.)

The WITNESS: I was simply going to testify that I saw a member

of the executive committee or the members of the executive committee upon this point, because I had no authority to accept any
86 stocks or any loans, or make any loans. I think the court suggested just now that that should be put in evidence.

Mr. McMURTRIE, (to the witness:) Read the by-laws.

The WITNESS: Section 3 of the by-laws of the company reads: "No advance of money or credit shall be made by the company without the approval of the executive committee or board."

Mr. McMURTRIE:

Q. Who were the executive committee at that time?

A. The executive committee, as I find from the minutes—I will read the minutes of December 4th: "The president appointed Messrs. Cummings, Clarke, and Welsh the executive committee for December." I would say that I saw the executive committee. Their custom was not regularly to meet, but they came in as a usual thing during the hours of business and asked what business there was to be done, and I saw one of the members of the executive com-
87 mittee, and he suggested this stock should be transferred. Subsequently the board met and this was suggested.

Mr. HARVEY:

Q. The board of directors?

A. The board of directors; and both of them, the executive committee and the board, said that they could not.

(Objected to; if the board took action it must appear in the evidence.)

The COURT:

Q. Is there any minute of it?

A. No, sir; there is no minute of any action having been taken.

Q. Of any action upon this point?

A. No, sir; because it was a rejection.

(Objected to; objection overruled; exception by plaintiff.)

The COURT: I would like to hear this witness state all that was done by the directors and the executive committee respecting it.

The WITNESS: I was instructed by the members of the executive committee that I saw, and also by the board, that we could not receive this stock and hold it as collateral security in the name of T. C. Henry, president, and Mr. Madeira was requested to send the stock to
88 William H. Blumer & Company, the certificate of stock, from whom we had received it, return it to him. And it was suggested by somebody, I know not who, that if the stock was put in the name of Dennis McCloskey, that then no one would be deceived into the belief that the warehouse company were the owners of the stock, and Dennis McCloskey's name is mentioned in that letter which has already been given in evidence. The certificate was returned, and Mr. Blumer wrote me the letter which has already been given

in evidence. I answered that letter and told him the reason why we had returned this certificate to him.

By Mr. McMURTRIE:

Q. Did the board of directors or the executive committe or any one having authority to bind the corporation at any time ever agree to accept the transfer of the stock as it was made in your name as president?

A. Never.

Cross-examined by Mr. HARVEY:

89 Q. Was there a meeting of the board of directors on the 2d of January?

A. A meeting was called.

Q. Was there a meeting in fact?

A. There was a meeting of the board of directors on the 2d of January.

Q. Was it organized?

A. It is stated in the minutes that there were but two gentlemen present besides myself.

Q. Then there was no business meeting of the board of directors on the 2d of January?

A. That is for you to say; there was a meeting of the board of directors.

Q. You were present?

A. Yes, sir.

Q. Who else?

A. Mr. Hoffman and Mr. Gibson; it was a stated meeting of the board of directors.

Q. How many directors have you in the board?

A. Nine.

Q. But three of the nine appeared?

A. But three of the nine appeared.

Q. And this conversation that you have spoken of was the conversation between the three?

90 A. Yes, sir; and with one of the executive committee.

Q. What member of the executive committee?

A. Mr. Welsh.

Q. He was the gentlemen that introduced Mr. Blumer?

A. Yes, sir.

Q. The gentleman that suggested that your name as president should be placed in the certificates of stock?

A. Yes, sir; at that point I would say that it is my impression that he did.

Q. Then with the exception of the conversation between you and Mr. Welsh at one time, and the conversation that took place between you and Mr. Hoffman and Mr. Gibson at another, there was no action on the part of the officers of your corporation in reference to this loan?

A. I don't know of any other action.

Q. The loan that was made by you and Mr. Welsh to Blumer & Company was approved, of course, or not disapproved?

A. There wasn't any loan made by us.

Q. There was a loan made in November, was there not?

91 A. No, sir.

Q. I thought you testified that a month before this transfer there was a loan on the gas stock?

A. Yes, sir; that had been approved of.

Q. Subsequently there was a loan upon this bank stock, was there not, and $10,000 placed to their credit on January 3rd, 1872?

A. Whether that $10,000——

Q. Isn't that a fact, first; you can explain it afterwards?

A. Ask the question again.

Q. $10,000 were advanced by the warehouse company to Blumer & Co. on the 3rd of January for the purpose of paying the draft drawn in favor of S. & W. Welsh?

A. Yes, sir; that is correct.

Q. Upon what was the advance of $10,000 made?

A. I was just beginning to explain. We held at that time stock valued at $50,000 by Mr Blumer, which he stated to us to be worth $50,000, and, therefore, I am not prepared to say that that loan of $10,000 was advanced upon this particular 450 shares.

92 Q. Are you prepared to say that it was not?

A. I am prepared to say that it was part of the $30,000 which we had agreed to lend to them upon the deposit of securities.

Q. And among the securities was there not specially named 450 shares of the capital stock of the First National Bank?

A. No, sir; that was not mentioned among the securities which were specially named at the time of the original transfer.

Q. But before you advanced $10,000 you had in your possession a certificate of stock in your name as president?

A. Yes, sir; Allen gas company stock.

Q. And you also had a certificate for 450 shares of First National Bank stock before you made the advance of January 3rd, 1872?

A. We had a certificate which we were sending back on that day.

Q. You had that in your possession at that time?

A. It was in possession of the company.

93 Q. And that was a certificate drawn to you as president?

A. Yes, sir.

Q. Which you understood to mean president of the warehouse company?

A. Yes, sir.

Q. The bank stock came on the 2nd, and the loan was made on the 3rd of January following?

The COURT: He says that certificate was still with them.

Mr. HARVEY (to the Court): Yes, sir; at the time that advance was made.

The WITNESS: The correspondence says that.

Q. You picked out Dennis McCloskey to be transferree of this stock, or did the directors?

A. I couldn't tell you.

Q. It was agreed or suggested at this informal talk on the 2nd of January that this 450 shares which stood in your name as president were to be transferred to some irresponsible person suggested by you?

A. It was agreed or suggested that there should be a change of transfer.

Q. And Dennis McCloskey was agreed upon as the party who should be the transferree of the stock?

94 A. I can't tell whether he was agreed upon or not.

Q. Was it agreed that he should be the transferree of the stock?

A. I don't know who suggested that.

Q. It was certainly suggested; you didn't do it of your own motion?

A. I don't know whether I did or not.

Q. It was either done by you or by the board?

A. There was no meeting of the board, you said just now. It was either done by me or some one of the directors at that informal meeting.

Q. You, in consequence of that suggestion or agreement, signed the transfer as president, did you not?

A. I signed the transfer as president.

A. As president of the Philadelphia Warehouse Company that means, of course?

A. The certificate is in the name of T. Charlton Henry, president.

Q. You signed that as president of the warehouse company?

A. I meant to transfer it out of the name T. Charlton Henry, president, and signed it then.

Q. Why did you have the seal of the corporation attached

95 to this transfer?

A. If I had been asked before this certificate was produced in court, I should have sworn that the seal was never attached to it.

Q. Be good enough to tell us why you had it attached?

A. I didn't have it attached.

Q. Did you see Mr. Madeira sign it?

A. I think I might.

Q. Didn't he sign it and attest the signature in your presence?

A. It is there stated that he signed and sealed that document; but I just stated that I didn't know that the seal had ever been put upon this certificate.

Q. You don't know whether you saw him put it there or not?

A. I don't know. I wrote, "This certificate is for value received; I hereby sell, assign, and transfer all my right, title, interest, etc.;" and I never should have directed him to put the seal on. I certainly didn't direct him, and I don't think I ever should when

I was simply transferring all my right, title and interest on the face of the certificate.

96 Q. So you are not able to say whether you knew that he put it there or not?

A. I am not.

Q. You say that your executive committee does not meet daily?

A. No, sir.

Q. The different members of it come in, I presume, sometimes one and two at a time?

A. Yes, sir.

Q. And some days, I presume, only one?

A. Yes, sir.

Q. If only one is there he approves of what has been done?

A. The approval of two of the executive committee is always required under our rules.

Q. Was it the invariable course followed in business?

A. When I was first president it was invariable, because I was very much afraid of making mistakes. Since that time I have had more liberty in managing the business.

Q. So that when one would come in you would ask his approval, and when another would come in you would ask his approval?

97 A. Yes, sir.

Q. The approval was not in writing?

A. No, sir.

Q. And no loans were made and no advances given unless there was an approval?

A. Such was the law and such was our action under it.

Q. Such was your invariable custom under it at that time?

A. Yes, sir.

Q. You have had this certificate of stock representing 450 shares in your possession ever since 1871?

A. I believe so.

Q. And have it yet?

A. No, sir; I am not there now.

Q. You had it up to some time in 1878 or '9, when you left?

A. Yes, sir.

Q. And the loan was continued from time to time?

A. The loan was continued and increased to very much larger sums.

Q. And other collaterals given?

A. Yes, sir.

Q. As the increase was made the collaterals were increased?

A. Yes, sir.

98 Q. First the gas stock, then the bank stock and then bonds and other matters?

A. Bonds of the Jordan Manufacturing Company, gas bonds changed for stock, and there was a great variety of securities. I couldn't begin to remember them all.

Q. These loans, I presume, were for stated periods?
A. Yes, sir.
Q. And the interest paid by Blumer & Company at maturity of renewal?
A. Yes, sir.
Q. And that continued up to the time of the failure of Blumer & Company?
A. Yes, sir.

J. LAUBER WELSH sworn and examined by Mr. JUNKIN:

Question. Were you one of the directors of the Philadelphia Warehouse Company in 1871?
Answer. Yes, sir.
Q. Tell us all you recollect about this transaction from the start?
A. I took Mr. Blumer to the office of the company and in-
99 troduced him to Mr. Henry, and we talked over certain things which he desired to have done—opening a credit with the corporation. My impression was that he was financially strong. We had operations with him, and our friends had had operations with him, and there were certain agreements entered into, but I don't recollect at present the details of the credit. It was satisfactory I believe and certain advances were made to him, and certain stocks received from him. My impression is that when we went there together the question of how those shares should be registered—it was not then known exactly what he was to give. All that he was to give was to be placed in Mr. Henry's name. Those things ran on until certain bank stocks were sent to the company's office, of which I was notified, I believe, immediately. My impression is that it was within a day or two that they had been placed in the com-
100 pany's name, and to which I at once objected——

Mr. MCMURTRIE:

Q. What was done in consequence of your objection?
A. It was agreed they should be returned. My impression is that Mr. Hoffman, who was not then a member of the executive committee, was in the office. Whether it was Mr. Hoffman or some other member I don't know. And Mr. Clark or the other gentleman who was on the executive committee, I am not certain, but I am under the impression it was Mr. Clark, but the moment I had notice that this stock had been registered in Mr. Henry's name as president, I objected to it.
Q. You say in consequence of that it was ordered to be sent back?
A. I don't know anything about whether it was actually returned or not. When it was returned I don't know. I supposed of course it would be returned.

Mr. JUNKIN:

Q. You were a member of the executive committee at the time?
A. I believe I was.

101 Cross-examination by MR. HARVEY:

Q. Didn't you suggest that these stocks which were to be hypothecated should be put in the name of Mr. Henry?

A. This bank stock?

Q. Any stock that you were to have?

A. I wouldn't go that far.

Q. Have you a distinct recollection whether you did or did not suggest it in anything between you and Mr. Blumer and Mr. Henry?

A. I did not suggest that the bank stock should be placed in Mr. Henry's name as president of the company.

Q. You knew nothing of the intention to place it in his name as president?

A. I didn't know that the stock was even to be sent at that time.

Q. When did you first learn that it was to be sent?

A. Very shortly after its receipt.

Q. How soon?

A. I didn't learn that it was to be sent, but I was informed that it had been received.

Q. You say you at once objected to it when you heard it had been registered in his name as president?

102 A. Yes, sir.

Q. Objected in what way; what did you say?

A. That as we are not owners we didn't want it placed in that way, being bank stock.

Q. Is that all?

A. Probably more; I don't know.

Q. Didn't you say that this stock should be transferred to another; that the company should not hold it?

A. That the company should not hold it.

Q. Did you, or anybody, in that conversation suggest the name of Dennis McCloskey?

A. Not to my knowledge.

Q. Do you remember his name being mentioned at all?

A. No, sir.

Q. Did you suggest any one in the employ of the company?

A. No, sir.

Q. Did you hear the name of any irresponsible person suggested who should take it and become the transferee of the stock and have a power to transfer them in blank?

A. At that time?

103 Q. Yes, sir.

A. No, sir.

Q. There was nothing said at all about it?

A. No, sir; not to my knowledge.

Q. Wasn't it in this conversation that you suggested that Mr. Henry should transfer this stock to some one to hold for the company?

A. The intention was——

Q. Was that said?

A. State it again.

Q. Was it said by any one in this conversation that Mr. Henry should transfer the stock which you then knew to have been registered in his name as president of the warehouse company, to some one else to hold it for the warehouse company?

A. It was decided that the stock should be transfered from Mr. Henry's name.

Q. To some one else for the benefit of the warehouse company?

A. Not that I remember; for this man had large securities which he could have placed——

Q. I am asking you what he did do, not what he could
104 have done?

A. I am only giving you the information.

Q. You know Mr. McCloskey, the porter?

A. I may have known him as porter.

Q. You say that Mr. Henry did not suggest him in this conversation?

A. The conversation which took place at that time was that that stock should be transferred and not allowed to remain in the company's name.

Q. For what reason?

A. Because we didn't want it there.

Q. Why not?

A. We were not the owners of the stock.

Q. What other reason had you?

A. He had never been instructed to place it in our name.

Q. Was that reason stated?

A. I suppose it was.

Q. Haven't you said here that you didn't know how it came to be placed in the name of Henry; who suggested it, you have stated that you didn't know?

A. I merely knew the fact that it was in his name.

Q. Was not the reason given in your conversation that
105 there might be an assessment upon this stock, and somebody else was to hold it to avoid the possibility of an assessment in case of the insolvency of the bank; and it was then suggested that Mr. Henry should transfer it to some one in the employ of the company, or to some one else, and that party on the back of the certificate should transfer it either in blank or specifically to the warehouse company?

A. The stock was fully paid. There was no appearance of any assessment.

Q. Wasn't that said?

A. About the assessment?

Q. Yes, sir.

A. Not that I remember.

Q. I will read you the letter of Mr. Henry so as to refresh your

recollection. (Counsel here read letter.) That took place, did it not?

A. Yes, sir.

Q. Is that a correct recital of what took place as to what would be done with this stock?

A. Does he refer to the action of the board, or his conversation with me?

106 Q. Read the letter and see.

A. I am speaking of my recollection. As soon as I heard that stock was in his hands, I objected to it.

Q. Did you state in your objection any reason like that the warehouse company might ultimately be liable?

A. I said simply that I would hold the bank stock.

Q. Was that the reason, because you knew the possible liability of the shareholders?

A. The words I don't remember. I am simply giving you the effect.

Q. Have you any doubt that that led to the conclusion that you arrived at; that possibly there might be an assessment, and that you didn't want the warehouse company to run that risk?

A. As a member of the executive committee, I should oppose always taking bank stock in the name of the company.

Q. Didn't you suggest the way to remedy this by transferring it?

A. I may have suggested to get it out of the name of the company.

107 Q. Then I understand you to say that what I have read you from Mr. Henry's letter did not take place between you and him—no conversation like that?

A. The only conversation that I had was, as far as I can remember, his notice to me that stock had come in registered in his name as president, to which I objected.

Q. You say that in your conversation with him nothing was said like I have read you from this letter?

A. I can hardly recollect all that might have been said ten years ago, but the fact of the objection the moment I had noticed, would be the facts I should remember most distinctly.

Q. You say that you have no recollection of this having been said?

A. I have no recollection of anything said to Mr. Henry.

Q. Or anything in this letter said between you and Mr. Henry?

A. I am not familiar with the letter.

Counsel here handed letter to witness, who, after reading
108 the same, answered, "No, sir."

Minutes of the meeting of the 3rd of January offered in evidence by the defendants to show that there was no meeting on that day and no quorum present. The meeting previous was the 6th of November, and then the next meeting is the 2nd of January,

which adjourned to January 4th. The next meeting was January 4th.

Also offered in evidence the by-laws, showing the duties of the president and executive committee.

Defendants' counsel also offer in evidence letter of W. H. Blumer to T. C. Henry, dated January 10th, 1872, as follows:

"OFFICE OF THE ALLEN GAS COMPANY.

"W. H. BLUMER, President. J. M. LINE, Treasurer.

"ALLENTOWN, PA., *January 10th*, 1872.

"T. C. HENRY, esq.

"DEAR SIR: Enclosed I hand you certificate of 450 shares First National Bank of Allentown. It is never out of the way if
109 you are cautious, but in this case I presume there would have been no danger. I would not sell the gas stock for $50,000. Truly,

W. H. BLUMER."

Defendants here closed.

110 *By-Laws of Defendants.*

ART. II. SEC. 3. The president shall have a general care and supervision of all the affairs and business of the company and of all the duties of the other officers and employees. He shall see that the register of stock and other books and accounts of the company are properly kept. He shall sign all checks, which shall in all cases *shall* be made payable to the order of the treasurer for the payment of money; he shall also sign on behalf of the company all deeds, contracts and agreements which the directors may order to be made, and cause the seal of the company to be affixed thereto by the secretary when the same may be necessary. He shall exclusively make known to the other officers and persons employed all orders and directions of the board, charging them with the performance of any duty. He shall at each regular meeting of the board report any important business that may have claimed his attention since the preceding meeting or upon which it would
111 be proper to take action.

SEC. 5. The office of secretary and treasurer may be held by one and the same person. They shall be filled by the board and the appointees shall hold office during the pleasure of the same. The treasurer shall keep full and correct account of all receipts and expenditures, make all collections and report same to the board at its regular meetings and at other times when required, and shall perform such duties under the supervision of the president as the board may order, and shall give security in such sum as the board may from time to time direct for the faithful performance of his duties.

SEC. 6. The secretary shall keep the minutes of the proceedings of the board of directors, be the general book-keeper and accountant of the company and keep the register of the certificates of capital

stock; and shall sign all certificates of stock and shall attest the seal of the company when used, and of which he shall be
112 the custodian, and shall in addition perform such other duties as the president and board of directors may from time to time direct.

113 ART. V. SEC. 1. The executive committee to consist of three members, in addition to the president and vice-president, to serve for the period of three months, or until their successors shall be appointed; shall be named by the board at its first meeting after election, and at each quarterly meeting thereafter.

SEC. 2. The duties of this committee shall be that of advising with the president during the recess between the stated meetings of the board on all matters of interest and importance to the welfare of the company. Two members of the committee with the president shall form a quorum for the purpose of transacting general business, and of advancing money or credits on goods and property, in the custody of the company, and for the consideration of any other matters incident to the business of the company.

SEC. 3. No advance of money or credit shall be made by the company without the approval of the executive committee or board.

114 The defendant asked the learned court to charge as follows:

Defendant's Points.

The liability is statutory.

1. The registered owner is made liable without regard to his real interest.

2. The actual owner is liable, irrespective of the name or person in whose name he sees fit to have his stock registered.

3. The pledgee is never liable as such.

4. To make the pledgee liable the stock must have been held in his own name.

5. No one is liable because he was once a registered owner—if he had ceased to be so before the insolvency existed.

6. A transfer cannot be said to be for the purpose of
115 evading a liable, if at the time of the transfer no liability existed.

7. The possible risk of future liability, inherent in all commercial enterprises, but for which there was no ground at the time of the transfer of shares, does not make such a transfer evasive or a fraud on the statute.

8. To have that effect, there must, at the time of transfer, be some fact existing from which a liability is supposed to have been incurred, or some transaction begun which results in a loss whereby a liability arises.

9. The rule by which the fraud in the transfer is to be tested is the same as that by which a voluntary conveyance, in trust for wife or children, is tested, as against execution.

10. If the warehouse company, when first informed that the shares had been transferred to their president, declined accepting that transfer, not desiring to be themselves registered owners, they are not liable in this action.

116

11. If they did so accept, but the stock was transferred by the president to another as trustee, to secure the loan and subject thereto as trustee for Blumer & Co., and this was done before there was a suspicion of insolvency and not to avoid an impending liability, defendants are not liable in this action.

12. To make the company liable the stock must have stood in the name of the company at the time the bank became insolvent.

13. If when the insolvency of the bank first existed or was anticipated the stock stood in the name of a trustee who was to hold the stock to secure the loan and subject to that pledge as trustee for Blumer & Co., the warehouse company is not liable in this action.

117

The plaintiffs asked the learned court to charge as follows:

Plaintiff's Points.

1. One who holds a certificate of shares of stock in a national bank, as collateral security, in the name of his own nominee, an irresponsible person, together with an assignment and power of attorney for the transfer of said shares from the nominee, is liable as a shareholder of said bank.

2. The defendants having received and accepted from Francis Ferris his certificate of 450 shares of the capital stock of the First National Bank of Allentown, and his assignment and power of attorney to transfer the same without any collateral agreement, thereby assumed all the liabilities of the said Francis Ferris as such shareholder.

3. If the jury find that the transfer of the 450 shares of stock to T. Charlton Henry, president, was made with the consent of the defendant's president, the defendants are bound by such transfer, and thereby became liable as shareholders.

118

4. The uncontroverted evidence of the case is, that the transfer of the 450 shares of stock to T. Charlton Henry, president, was made by the authority of defendants.

5. The action of defendants after notice of the transfer of 450 shares of said stock to the name of their president, was a ratification of said transfer.

6. The transfer of 450 shares of said stock in the name of T. Charlton Henry, president, by the defendant to Dennis McCloskey, was a ratification of the transfer of said shares to the said Henry, president.

7. After knowledge of the transfer of the 450 shares to T. Charlton Henry, president, came to the defendants, it was their duty to repudiate the said transfer, if the same was made without their knowledge or consent.

119

8. The uncontroverted evidence of the case is that the transfer of the 450 shares of said stock from the defendants to Dennis McCloskey was not an "out and out" transfer.

9. The transfer of the 450 shares of said stock from defendants to Dennis McCloskey did not relieve them from their liability as stockholders.

10. Under the evidence in the case the verdict must be for the plaintiff.

11. Upon the surrender by Wm. Kern of his certificate for 450 shares of stock, and the issuing of a certificate for 450 of the shares to T. Charlton Henry, president, and his acceptance thereof, the liability of the said Kern as the holder of said 450 shares ceased.

120 And thereupon the learned court answered the points of plaintiff and of defendant, and charged the jury as follows: (Prout the same filed of record.)

121 And thereupon the counsel for the said plaintiff did then and there except to the aforesaid answers to points and charges, as follows:

1. To the following answer to the 1st, 2nd, 3rd, 4th, 5th, 6th, 8th, 9th and 10th of plaintiff's points:

A. They are disallowed. The instructions asked for is refused, except to the extent that it may be given in the general charge.

2. To the following answers to plaintiff's 7th point:

A. I will not say that in terms; but will say, that if when the company received knowledge of the transfer to T. Charlton Henry, president, it had failed to manifest its disapproval of the transfer to its president such, failure would be evidence of acquiescence in and assent to what was then done; but in saying this, it is my duty also to say to you that within three or four days of the time when Mr. Henry received information of this transfer the secretary informed Mr. Blumer in effect that the company did not accept

122 a transfer of the stock to it.

3. To the following answers to defendant's 1st point:

A. That is true.

4. To the following answer to defendant's 2d point:

A. That is also true.

5. To the following answer to defendant's 3d point:

A. This is so.

6. To the following answer to defendant's 4th point:

A. That is what the court has just said to you.

7. Also to the following portions of the charge of the court:

"Mr. Henry consulted such directors of the company constituting a part of the executive board as he met with, for there was no meeting, and answered in substance and effect through the secretary and by means of his subsequent letters to Mr. Blumer, that this certificate would not be received in this way—in effect, that

123 the company was not willing to hold this stock thus apparently in its name."

8. "They were willing to accept the stock as collateral, but they had a right to refuse to be made responsible for assessments that might thereafter be made upon it, by taking a transfer to themselves."

9. "They therefore said subsequently through Mr. Henry, when assigning reasons for sending the certificate back, that they would not accept it in their name or their president's, because they were not willing to assume the responsibility that attaches to ownership."

10. "I repeat, it is the judgment of the court that, if you believe Mr. Henry, there is nothing in this case that will justify a verdict for the plaintiff."

11. "It is for you to say whether Mr. Henry is worthy of
124 belief; he is not directly contradicted by any one."

12. "I repeat to you that, in the absence of the testimony of Mr. Henry, the absence of the letters and explanations appealed to by the defendant, you might, from dealings between the parties and the transfer made by the company, attested by the secretary with the seal, unexplained, if you thought it justifiable, infer that the company had authorized Mr. Henry to take this stock for it, or had agreed or assented to hold it in his name; but with the testimony of Mr. Henry, if you believe it, you cannot draw such inference. The case therefore turns upon what you think of his testimony. I have no hesitation in saying to you that it is my judgment, and I think it is the judgment of the court, that there is nothing here which would justify a disregard of the statements made by Mr. Henry. Judge McKennan states in your hearing that he assents to this view of the case."

125 And thereupon the counsel for the said plaintiff did then and there except to the aforesaid charge and opinion of the said court, and inasmuch as the said charge and opinion so excepted to do not appear upon the record:

The said counsel for the said plaintiff did then and there tender this bill of exceptions to the opinion of the said court, and requested the seals of the judges aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon the aforesaid judges, at the request of the said counsel for the plaintiff, did put their seals to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this thirteenth day of April, A. D. 1881.

[SEAL.] (Signed) WM. BUTLER.

126 (Endorsed:) 25; Oct. sess. 1879; U. S. C. C.; Anderson, receiver, &c., *vs.* Phil'a Warehouse Co.; bill of exceptions, presented April 20, 1881; W. B.; filed July 25, 1881; (signed,) P. K. Erdman, Edw. Harvey.

127 UNITED STATES OF AMERICA, } *sct.*
Eastern district of Pennsylvania, }

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original record and proceedings in the case of Anderson, receiver, &c., *vs.* The Philadelphia Warehouse Co., No. 25, October session, 1879, on file, and now remaining among the records of the said court in my office.

In testimony whereof I have herunto subscribed my name and affixed the seal of the said court, at Philadelphia, this twelfth day of September, in the year of our Lord one thousand eight hundred and eighty-one, and of the independence of these United States the one hundred and sixth.

[SEAL.] SAMUEL BELL, *Clerk of C. C.*

(Endorsement on cover:) E. Pennsylvania, C. C. U. S.; No. 298; Henry J. Anderson, receiver of the First National Bank of Allentown, plaintiff in error, *vs.* The Philadelphia Warehouse Company; filed September 20, 1881; 127 pages.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1883. No. 298.

HENRY J. ANDERSON, Receiver of the First National Bank of Allentown,

Plaintiff in Error,

vs.

THE PHILADELPHIA WAREHOUSE COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

PLAINTIFF'S BRIEF.

STATEMENT OF THE CASE.

This was an action in *assumpsit* by Henry J. Anderson, Receiver of the First National Bank of Allentown, a banking association under the National Currency Acts, against the Philadelphia Warehouse Company.

The plaintiff's declarations alleged a claim against the defendants as the holder of 450 shares of the capital stock of the First National Bank of Allentown, for an assessment of twenty *per centum* of the par value of these shares, duly called

for by the Comptroller of the Currency of the United States, after ascertainment of the insolvency of the bank. The assessment upon these shares amounted to $9,000

The defendant pleaded the general issue, and at the trials, the only contention was, whether the defendant was the holder of these bank shares within the meaning of the Acts of Congress.

The case was twice tried. At the first trial there was a verdict for the plaintiff; upon motion of defendant the court below granted a new trial which resulted in a verdict for defendant, upon which judgment was entered.

At the trial the plaintiff's appointment in the year 1878, and a due call for the alleged assessment by the Comptroller of the Currency, on May 10, 1878, were shown.

The facts relating to the ownership of the 450 shares of bank stock, the assessment upon which it is sought to recover, were also to a large extent undisputed. These facts, so far as uncontroverted, may be briefly stated as follows:

The shares of stock were originally issued to one William Kern, a director of the bank, and a member of the firm of William H. Blumer & Co., bankers at Allentown, Pennsylvania. William H. Blumer, of that firm, was President of the First National Bank of Allentown, and the remaining member of the firm, Jesse M. Line, was also a director of the bank. In November, 1871, the firm of William H. Blumer & Co., applied to the defendant, the Philadelphia Warehouse Co., doing business in lending money and credit at Philadelphia, for a loan of money and to open a line of credit, being introduced by J. Lowber Welsh, one of the directors of the corporation defendant. They deposited some securities and received some advances upon the same. On the 27th of December, of the same year. the certificate covering the 450 shares of stock of the First National Bank of Allentown, was surrendered to the bank with an assignment in blank executed by William Kern. Upon the same day, a new certificate, No. 85, for

450 shares was issued to "T. Charlton Henry, Esq., Pres." This certificate was carried or sent by William H. Blumer & Co., to the defendant on the following day, December 28, 1871, and deposited with the defendant, to be a part of the securities for the line of credit for which they had stipulated. T. Charlton Henry was the President of the defendant corporation, and the certificate of bank shares was so made out at the instance or request of the President or some other officer of the defendant corporation. The certificate was understood by the defendant to be issued to T. Charlton Henry as President of the defendant corporation. (Printed record, page 34.) Several days afterwards, on January 3, 1872, the defendant increased its loan to William H. Blumer & Co. by $10,000. On the same day, an assignment of the 450 shares of bank stock, to one Dennis McCloskey, with power of attorney to transfer, en dorsed on the certificate, was signed and executed by T. Charlton Henry as President, and attested by the Secretary and the seal of the corporation defendant. Simultaneously, however, there was executed and delivered to defendant, by Dennis McCloskey, an assignment in blank for the same shares, with a power of attorney, to H. F. West, (who was Treasurer of the corporation defendant) to transfer. Dennis McCloskey, mentioned in these documents, was "the boy in the office" of the defendant, a minor, and an irresponsible person. (Printed record, p. 26.) The certificate of bank shares in the name of "T. Charlton Henry, Esq., Pres.," with assignment to McCloskey endorsed, was, on the same day sent, enclosed in a letter, to William H. Blumer & Co. The letter is as follows:

January 3, 1872.

MESSRS. WM. H. BLUMER & CO.,

ALLENTOWN, PA.

Dear Sirs.—Herewith you have certificate for 450 shares of stock No. 85, of the First National Bank of Allentown, in the name of T. Charlton Henry, President, which you will please have transferred and a new certificate issued in

the name of Dennis McCloskey. The certificate, when ready, enclose to us. This morning we paid your draft, favor of Messrs. S. & W. Welsh, for $10,000.

Yours, very respectfully,

L. C. MADEIRA,
Secretary.

To this letter, Wm. H. Blumer & Co., answered on the following day, January 4, 1872, fearing that a re-hypothecation of the stock was intended and asking for an "explanation why the stock is to be transferred to a third party."

Two days afterwards, the defendant, through its President, replied as follows:

January 6, 1872.

WM. H. BLUMER, ESQ., PRES'T:

Dear Sir.—I am in receipt of your favor of the fourth inst. and in reply would say that I am not surprised at your inquiry, since you were requested to have the certificate made out in my name. We have no need to borrow any money, nor do we expect or intend to put this stock out of our hands, but the failure of one or two national banks lately, led our directors to consider the clause in the national bank act, which renders all stockholders liable in case of failure to pay up to the receivers the full amount of the stock in their name; and on this account we determine to have the certificates of national bank stock put in the name of Dennis McCloskey, who is the boy in our office, taking his power of attorney to transfer the same. Hoping this explanation will prove satisfactory, I am yours respectfully,

T. C. HENRY,
Pres't.

The certificate in the name of Henry was then surrendered to the bank, and a new certificate, No. 86, issued to Dennis McCloskey, on January 10, 1872, and sent by William H. Blumer & Co. to the defendant. The defendant continued to hold the certificate of stock in the name of Dennis McCloskey, and his assignment and power to transfer, until

July 15, 1875, when McCloskey had left defendant's employ and was deceased. On July 15, 1875, the defendant caused the stock to be transferred to Francis Ferris, also a minor, under the age of twenty-one years, a clerk in the defendant's employ and pecuniarily irresponsible. Simultaneously, however, there was executed and delivered by Francis Ferris to the defendant an assignment of the stock and an irrevocable power to transfer, both in blank. On the same day, July 15, 1875, the defendant caused the certificate in the name of McCloskey, to be surrendered to the bank and a new certificate, No. 118, issued to Francis Ferris. This certificate was delivered to Harry F. West (the treasurer of the corporation defendant), who receipted therefor on the books of the bank. The defendant has ever since held the certificate in the name of Francis Ferris, and his assignment and power to transfer, having produced both at the trial upon call of the plaintiff.

(The certificates of stock and transfers referred to are all found *in extenso* on the printed record, pp. 22, 23, 24 and 25; and the letters referred to on printed record p. 29.)

The defendant continued its loans to William H. Blumer & Co., increasing them, until the failure of William H. Blumer & Co., in 1877, and continuously up to the time of trial held these shares of stock as collateral security for its loans to William H. Blumer & Co.

The defendant was allowed to show, under objectione, by the oral testimony of T. Charlton Henry, that he, as president of the defendant company, had no authority to accept the certificate of bank stock in his name as president, by reason of a by-law providing that "no advance of money or credit shall be made by the company without the approval of the executive committee or board;" that when he received from William H. Blumer & Co. the certificate of bank stock in his name, as president, neither the committee nor the board had approved of the acceptance thereof in that form; and that after receiving the certificate he had a conversation about it with a member of the committee,

and also on January 2, 1872, with two members of the board, that being the stated time for a meeting of the board, but there being in attendance only two members beside himself, while the board consisted of nine members; there was no action taken of which any minute was made. The witness testified: "I was instructed by the members of the executive committee that I saw, and also by the board, that we could not receive this stock and hold it as collateral security in the name of T. C. Henry, president, and Mr. Madeira was requested to send the stock to William H. Blumer & Company, from whom we had received it; return it to him. And it was suggested by somebody, I know not who, that if the stock was put in the name of Dennis McCloskey, that then no one would be deceived into the belief that the Warehouse Company were the owners of the stock. * * * "

Upon the evidence thus presented, the court instructed the jury in answer to points and in the general charge:

(1.) That the individual liability imposed by the statute does not attach to the pledgee or collateral holder of national bank stock, unless the stock is registered in his name, even though the stock is registered in the name of an irresponsible person by procurement of the pedgee, and the pledgee holds the certificate with an assignment of and irrevocable power to transfer the stock from the person in whose name the stock is registered.

(2.) That it is the meaning and effect of the letter from L. C. Madeira, Secretary, to William H. Blumer & Co., dated January 2, 1872, and of the letter of T. Charlton Henry, President, to William H. Blumer, President, dated January 4, 1872 (both above quoted in full), that the defendant *refused to accept* the certificate of stock in the name of "T. Charlton Henry, Esq., Pres."

(3.) That if the jury believed the testimony of Mr. Henry, the transfer of the stock to the defendant was unauthorized and unaccepted, and there was nothing in the case that would justify a verdict for the plaintiff. That Mr. Henry was not directly contradicted by any one, and

that there was nothing in the case that would justify a disregard of his statements.

Under these instructions, the jury rendered a verdict for the defendant.

These instructions of the court, and the admission of Mr. Henry's testimony as to his conversations with members of the defendants' Board of Directors, constitute the errors assigned for a reversal of the judgment.

ASSIGNMENT OF ERRORS.

1. The court erred in the following instruction to the jury.

Defendant's Third Point.—The pledgee is never liable as such.

Answer.—This is so. The man for whose benefit bank stock is pledged, unless it is transferred to him so that he becomes a registered owner, is not liable. He is not liable simply because it is pledged for his benefit without a transfer to him and a registration in consequence.

2. The court erred in the following instructions to the jury:

Defendant's Fourth Point.—To make the pledgee liable the stock must have been held in his own name.

Answer.—That is what the court has just said to you.

3. The court erred in the following instruction to the jury:

Plaintiff's First Point.—One who holds a certificate of shares of stock in a national bank, as collateral security, in the name of his own nominee, an irresponsible person, together with an assignment and power of attorney for the transfer of said shares from the nominee, is liable as a shareholder of said bank.

Answer.—The instruction asked for is refused, except to the extent that it may be given in the general charge.

[No modification of this ruling is found in the general charge.]

4. The court erred in the following instruction to the jury:

Plaintiff's Second Point. — The defendants having received and accepted from Francis Ferris his certificate of 450 shares of the capital stock of the First National Bank of Allentown, and his assignment and power of attorney to transfer the same without any collateral agreement, thereby assumed all the liabilities of the said Francis Ferris as such shareholder.

Answer.—The instruction asked for is refused, except to the extent that it may be given in the general charge.

[No modification of this ruling is found in the general charge.]

5. The Court erred in the following instruction to the jury:

Plaintiff's Third Point.—If the jury find that the transfer of the 450 shares of stock to T. Charlton Henry, President, was made with the consent of the defendants' president, the defendants are bound by such transfer, and thereby became liable as shareholders.

Answer.—The instruction asked for is refused, except to the extent that it may be given in the general charge.

[No modification of this ruling is found in the general charge.]

6. The Court erred in the following instruction to the jury:

Plaintiff's Sixth Point.—The transfer of 450 shares of said stock in the name of T. Charlton Henry, President, by the defendants, to Dennis McCloskey, was a ratification of the transfer of said shares to the said Henry, President.

Answer.—The instruction asked for is refused, except to the extent that it may be given in the general charge.

[No modification of this ruling is found in the general charge.]

7. The Court erred in the following instruction to the jury:

Plaintiff's Seventh Point.—After knowledge of the transfer of the 450 shares to T. Charlton Henry, President, came to the defendants, it was their duty to repudiate the said transfer, if the same was made without their knowledge or consent.

Answer.—I will not say that in terms; but will say, that if when the company received knowledge of the transfer to T. Charlton Henry, President, it had failed to manifest its disapproval of the transfer to its president, such failure would be evidence of acquiescence in and assent to what was then done; but in saying this it is my duty also to say to you that within three or four days of the time when Mr. Henry received information of this transfer, the secretary informed Mr. Blumer in effect that the company did not accept a transfer of the stock to it.

8. The court erred in the following instruction to the jury:

Plaintiff's Eighth Point.—The uncontroverted evidence of the case is that the transfer of the 450 shares of said stock from the defendants to Dennis McCloskey was not an "out and out" transfer.

Answer.—The instruction asked for is refused, except to the extent that it may be given in the general charge.

[No modification of this ruling is found in the general charge.]

9. The court erred in the following instruction to the jury:

Plaintiff's Ninth Point.—The transfer of the 450 shares of said stock from defendants to Dennis McCloskey did not relieve them from their liability as stockholders.

Answer.—The instruction asked for is refused, except to the extent that it may be given in the general charge.

10. The court erred in the following instruction to the jury:

Mr. Henry consulted such directors of the company constituting a part of the executive board as he met with, for there was no meeting, and answered in substance and effect through the secretary and by means of his subsequent letters to Mr. Blumer, that this certificate would not be received in this way; in effect, that the company was not willing to hold this stock thus apparently in its name.

11. The court erred in the following instruction to the jury:

They (the company defendant) were willing to accept the stock as collateral, but they had a right to refuse to be made responsible for assessments that might thereafter be made upon it, by taking a transfer to themselves.

12. The court erred in the following instruction to the jury:

They (the company defendant) therefore said subsequently through Mr. Henry, when assigning reasons for sending the certificate back, that they would not accept it in their name or their president's, because they were not willing to assume the responsibility that attaches to ownership.

13. The court erred in the following instruction to the jury:

I repeat, it is the judgment of the court that, if you believe Mr. Henry, there is nothing in this case that will justify a verdict for the plaintiff.

14. The court erred in the following instruction to the jury:

It is for you to say whether Mr. Henry is worthy of belief; he is not directly contradicted by any one.

15. The court erred in the following instruction to the jury:

I repeat to you that, in the absence of the testimony of Mr. Henry, the absence of the letters and explanations appealed to by the defendant, you might, from dealings between the parties and the transfer made by the company, attested by the secretary with the seal, unexplained, if you thought it justifiable, infer that the company had authorized Mr. Henry to take this stock for it, or had agreed, or assented to hold it in his name; but with the testimony of Mr. Henry, if you believe it, you cannot draw such inference. The case therefore turns upon what you think of his testimony. I have no hesitation in saying to you that it is my judgment, and I think it is the judgment of the court, that there is nothing here which would justify a disregard of the statements made by Mr. Henry. Judge McKennan states in your hearing that he assents to this view of the case.

16. The court erred in admitting the testimony of T. Charlton Henry, as to conversations with or informal action by the defendant's board of directors. The testimony is as follows:

"I was instructed by the members of the executive committee that I saw, and also by the board, that we could not receive this stock and hold it as collateral security in the name of T. C. Henry, president, and Mr. Madeira was requested to send the stock to William H. Blumer & Co., the certificate of stock, from whom we had received it; return it to him. And it was suggested by somebody, I know not who, that if the stock was put in the name of Dennis McCloskey, that then no one would be deceived into the belief that the Warehouse Company were the owners of the stock. * * *"

ARGUMENT.

This controversy arises under sections 5139 and 5151 of the Revised Statutes, wherein it is provided:

"The capital stock of each association shall be divided into shares of one hundred dollars each, and be deemed personal property, and transferable on the books of the association in such manner as may be prescribed in the by-lawsor articles of association; and every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of the prior holder of such shares * * * The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares."

Section 5152, Revised Statutes, provides:

"Persons holding stock as executors, administrators, guardians, or trustees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust funds would be, if living and competent to act and hold the stock in his own name."

The question of the liability of a pledgee of national bank stock, under this statute, received extended consideration in this court in the case of *National Bank* vs. *Case*, 99 *U. S. Rep.*, 628. The case is strikingly similar to the case at bar, and in the points upon which it was decided can hardly be distinguished. In that case the pledgee held the certificate of stock in the name of the pledgor, together with an assignment of the stock; upon a certain day the pledgee caused the transfer to itself to be made upon the books of the bank, and at the same time transferred a part of the shares to an irresponsible person, with an agreement to re-transfer upon request. Upon the following day the balance of stock was transferred in the same manner. No

one could have been deceived by the registry in the name of the pledgee, for the stock was *uno flatu* transferred out of its name. Its name was only a *conduit* for the transfer, so far as disclosed by the registry. It is true that in this case the bank, at the time of these transfers, was in a failing condition, and the pledgee was shown to have had knowledge of it, but these facts are expressly eliminated in the decision of the case.

The opinion of the court in that case, delivered by Mr. Justice Strong, is, aside from its authoritative exposition of the law applicable to this case, so readily understood in its application to this case, that no apology is needed for introducing a considerable portion of it in this argument.

"From this testimony, as well as from other in the "record, it is evident that Waldo (*nominee*) held the stock as "a cover for the Germania Bank (*pledgee*); that, notwith- "standing the transfer to him, it remained subject to the "bank's control, and that the transfer to him was made to "evade the liability of the true owners. It was not a sale. "The bank continued after it was made a pledgee with the "legal title in itself or in its representative, and Phelps, "McCullough & Co. (*pledgors*) were no longer the owners.

"Such being the facts of the case, there can be no seri- "ous controversy respecting the principles of law applicable "to them. It is thoroughly established that one to whom "stock has been transferred in pledge or as collateral security "for money loaned, and who appears on the books of the "corporation as the owner of the stock, is liable as a stock- "holder for the benefit of creditors. We so held in *Pullman* "vs. *Upton*, 96 *U. S.*, 328, and like decisions abound in "English courts, and in numerous American cases, to some "of which we refer: *Adderly* vs. *Storm*, 6 *Hill, N. Y.*, 624; "*Roosevelt* vs. *Brown*, 11 *N. Y.*, 148; *Holyoke Bank* vs. "*Burnham*, 11 *Cush., Mass.*, 183; *Magruder* vs. *Colston*, 44 "*Md.*, 349; *Crease* vs. *Babcock*, 10 *Metc., Mass.*, 525; *Whee-* "*lock* vs. *Kost*, 77 *Ill.*, 296; *Empire City Bank*, 18 *N. Y.*, "199; *Hale* vs. *Walker*, 31 *Iowa*, 344. For this several "reasons are given. One is, that he is estopped from deny-

"ing his liability by voluntarily holding himself out to the "public as the owner of the stock, and his denial of the "ownership is inconsistent with the representations he has "made; another is, that by taking the legal title he has "released the former owner; and a third is, that after hav- "ing taken the apparant ownership and thus become entitled "to receive dividends, vote at elections and enjoy all the "privileges of ownership, it would be inequitable to allow "him to refuse the responsibilities of a stockholder. This "subject is well treated in Mr. Thompson's recently pub- "lished work on 'The Liability of Stockholders,' where "may be found not only a full collection of authorities, but "a careful analysis of what the authorities contain. *Vide*, "c. 13.

"When, therefore, the stock was transferred to the "Germania Bank, though it continued to be held merely as "a collateral security, the bank became subject to the lia- "bilities of a stockholder, and the liability accrued the "instant the transfer was made. At that instant the "liability of Philips, McCullough & Co. ceased. We "have, then, only to inquire whether the bank suc- "ceeded in throwing off that liability by its transfer "to its clerk, Waldo. It certainly did not thereby "divest itself of its substantial ownership. It is not "every transfer that releases a stockholder from his "responsibility as such. While it is true that shareholders "of the stock of a corporation generally have a right to "transfer their shares and thus disconnect themselves from "the corporation and from any responsibility on account of "it, it is equally true that there are some limits to this right. "A transfer for the mere purpose of avoiding his liability to "the company or its creditors is fraudulent and void, and he "remains still liable. The English cases, it is admitted, give "effect to such transfers, if they are made (as it is called), 'out "and out;' that is, completely, so as to divest the trans- "ferrer of all interest in the stock. But even in them it is "held that if the transfer is merely colorable, or, as some- "times coarsely denominated, a sham,—if, in fact, the

"transferee is a mere tool or nominee of the transferrer, so "that, as between themselves there has been no real "transfer, 'but in the event of the company becoming pros- "perous, the transferrer would become interested in the "profits, the transfer will be held for naught, and the "transferrer will be put upon the list of contributories.' "*William's Case, Law Rep.*, 9 *Eq.*, 225, note where the "transfer was, as in the present case, made to a clerk of the "transferrer without consideration; *Payne's Case, id.*, 223; "*Kintrea's Case, Law Rep.*, 5 *Ch.*, 95. See also, *Lindley on* "*Partnership*, (2 *ed.*), p. 1352; *Chinnock's Case*, 1 *Johns*, "(*Eng.*,) *Ch.* 714; *Hyam's Case*, 1 *DeG., F. & J.*, 75; *Budd's* "*Case*, 3 *id.*, 290. The American doctrine is even more "stringent. Mr. Thompson states it thus, and he is sup- "ported by the adjudicated cases; 'a transfer of shares in a "failing corporation, made by the transferrer with the "purpose of escaping his liability as a shareholder, to a person "who, from any cause, is incapable of responding in respect "to such liability, is void as to the creditors of the "company and as to other shareholders, although as "between the transferrer and the transferee it was "out and out.' *Nathan* vs. *Whitlock*, 9 *Paige* (*N. Y.*), "152; *McClaren* vs. *Franciscus*, 43 *Mo.*, 452; *Marcy* vs. "*Clark*, 17 *Mass.*, 329; *Johnson* vs. *Laflies*, by DILLON, J.; "6 *Cent. Law Jour.*, 131. [This doctrine has since been applied "in this Court, *Rowden* vs. *Johnson*, 107 *U. S. Rep.*, 25.]"

"The case in hand does not need the application of "so rigorous a doctrine. While the evidence establishes "that the Crescent City was in a failing condition when the "transfer to Waldo was made, and leaves no reasonable "doubt that the Germania Bank knew it and made "the transfer to escape responsibility, it establishes much "more. The transfer was not an out and out transfer. The "stock remained the property of the transferrer. Waldo "was bound to re-transfer it when requested, and all the "privileges and possible benefits of ownership continued to "belong to the bank. No case holds that such a transfer "relieves the transferrer from his liability as a stockholder.

" We are, therefore, compelled to rule that the decree of the " Circuit Court against the Germania Bank was correct."

In the case of *Davis* vs. *Stevens*, 17 *Blatch.*, 259, WAITE, C. J., *U. S. Circuit Ct., Southern Dist. N. Y.*, the suit was against the real owners of national bank stock standing in the name of an irresponsible person by the owner's procurement. The stock had never been registered in the name of the defendant, and at the time of the purchase and transfer to his nominee there was no suspicion of the insolvency of the bank. It was held that the defendant could be charged in an action at law, as a shareholder, with the statutory liability for debts. In the course of the opinion it is said:

" So far as Elston (*nominee*) was concerned, the transfer " to him was colorable only, and it is apparent that the only " object Stevens (*owner*) had in causing it to be made was to " conceal his ownership, and thus, if possible, escape all " statutory liability. Such being the case I am unable to " see how he can occupy any different position from what " he would if the stock had been taken directly " from his own name on the books and put in " that of Elston. He is still the real owner, " with Elston as his agent, specially authorized to hold for " him the legal title. Every principal is responsible for the " obligations of his agency. The debt of the agent is the " debt of the principal and always recoverable from the " principal. By the rules of law which govern the relation " of principal and agent, the registry on the books in " the name of Elston was, as between Stevens and Elston, " in legal effect the same as a registry in the name of Stevens. " The obligations which Elston assumed by reason of such " registry were the obligations of Stevens."

According to the principles of law established in these cases and the authorities cited, it is safe to predicate of the case in hand that the law would not be satisfied with the liability of Francis Ferris, the irresponsible registered owner, only.

He " only held the stock as a cover for " some one who stood behind him.

The transfer to him was not "out and out."

He never had any beneficial interest in the stock, nor any control of it whatever.

The obligations which he assumed by reason of the registry in his name were the obligations of his principal.

To whom, then, aside from the nominal holder, does the statutory liability attach.

William Kern was the owner of the stock before the defendants' connection with it, but he was released the instant that the stock was transferred upon the books of the bank.

William Kern, at the time of the failure of the bank, had just the same interest in this stock and sustained the same relation to it as any other person who has transferred his stock in pledge with a registration in consequence.

William Kern had no control of the stock, nominal or real, direct or indirect, and could exercise no privilege under it, nor demand any benefit from it.

William Kern's transfer of the stock was *real*, and he was not consulted and had no part in the registration in the name of Ferris.

On the other hand, the defendant procured the registration in Ferris.

The defendant was Ferris' employer, his principal, and bound to indemnify him.

The registration in Ferris was for the express purpose of shielding the defendant from the statutory liability; no other person made any motion to avoid the liability imposed by law.

The defendant holds the certificate of the stock in the name of Ferris with his assignment of and irrevocable power of attorney to transfer the stock. (Printed record, p. 52.)

The defendant had all the benefits of ownership of the stock and could exercise all the privileges of ownership. All the nominal or apparent rights of Ferris belonged to the defendant.

All these considerations are irrespective of the questions whether the transfer of the stock to the defendant in the name of its president was accepted by the defendant or not; if it was so accepted the case is not only within the reason but within the letter of the decision in *National Bank* vs. *Case, supra.*

But the court below interpreted the letter from L. C. Madeira, Secretary, to William H. Blumer, dated January 8, 1872, enclosing the certificate of stock in the name of defendant's president, with an assignment from the defendant to Dennis McClosky, endorsed, and the letter of T. C. Henry, president, to William H. Blumer, president, dated January 6, 1872, to mean that the defendant *refused to accept* the assignment to itself in the name of its president. [The letters are shown on Printed Record, p. 29; the assignment to McCloskey, p. 23; and the interpretation of the court in answer to plaintiff's seventh point, and in the general charge, pp. 8, *et. seq.*, being the instructions assigned as the sixth, seventh, tenth and twelfth errors.]

We are not informed of the rule or reason for this interpretation. This is important, for surely it is not the natural meaning of the language used in the letters. The first letter simply calls attention to the enclosure of the certificate, and asks to have a transfer made, (which was endorsed on the certificate,) and a new certificate returned. The second letter is so very plain and so important that it cannot appear too often upon this brief. It was written in answer to a letter of William H. Blumer, who fearing that a re-hypothecation of the stock was intended, asked for an explanation of the transfer to McCloskey.

It is as follows:

January 6, 1872,

William H. Blumer, Esq., Pres't.

Dear sir: I am in receipt of your favor of the 4th inst., and in reply would say that I am not surprised at your

inquiry, since you were requested to have the certificate made out in my name. We have no need to borrow any money, nor do we expect or intend to put this stock out of our hands, but the failnre of one or two national banks lately led our directors to consider the clause in the National Bank Act which renders all stockholders liable in case of failure to pay up to the receiver the full amount of the stock in their name; and on this account we determine to have the certificates of national bank stock put in the name of Dennis McCloskey, who is the boy in our office, taking his power of attorney to transfer the same. Hoping this explanation will prove satisfactory,

I am yours respectfully,

T. C. HENRY,

Prest.

It will also be remembered that the defendant already held McCloskey's assignment of the stock and irrevocable power to transfer, the same having been given January 3, 1872, the same day on which the certificate was forwarded to Mr. Blumer.

The plain meaning of these letters is that the defendant did accept the stock, but in order to avoid the statutory liability, did, of its own motion and without consultation with any one, "determine to have the certificate * * * put in the name of Dennis McCloskey * * * taking his power of attorney to transfer the same."

Since the court gave no reason for its interpretation of these letters, it is hardly necessary to assign reasons for reading them according to the natural meaning of the language.

The next question is always the last shift of corporations, that the president had no authority to accept the assignment of the stock to the defendant in his name as president, and that the defendant never ratified it. Mr. Henry was permitted to testify that a by law prohibited his action without the consent of the board of directors or executive committee; that he did not have this consent when he re-

ceived the stock, and that when he reported it to several members of the board and committee objections were made to so receiving or holding the stock, and that his subsequent action to place the stock in the name of the office boy was in consequence. (Printed record, pp. 30, *et seq.*)

The court instructed the jury that if they believed the testimony of Mr. Henry, there was nothing in the case to justify a verdict for the plaintiff, and, further, that Mr. Henry was not directly contradicted by any one, and that, in the opinion of the court, nothing in the case would justify a disregard of his statements. (Printed record, pp. 12, 13; Errors, 13, 14, 15 and 16.)

This practically took the case from the jury, and the effect of it is to judge of the liability of the defendants, not by its acts through its executive officers, but by private conversations among its directors.

The assignment of the stock to McCloskey, the acceptance of a re-assignment and power of attorney from him, the letters of the secretary and president, already set forth, the subsequent transfer of the stock to the name of Francis Ferris, the acceptance of the assignment and power of attorney from him, these were the corporate acts of the defendant with reference to this stock, after receiving the assignment to itself in the name of its president, and all show previous authority for and subsequent ratification of the assignment to defendant. The testimony of Mr. Henry of matters outside of these acts can give no color to the acts themselves; least of all so far override the effect of these acts as evidence, as to reduce the function of the jury to a mere perfunctory service.

For instance, the fact that before returning the certificate in the name of "T. Charlton Henry, Esq., Pres.," to William Kern or William H. Blumer & Co., the defendants, without consulting any one, assigned the stock to Dennis McCloskey, a minor and irresponsible, and took a re-assignment and irrevocable power to transfer the stock from him; this fact, as evidence of the ratification by the defendant of

the transfer to its president, it was permitted to wholly overcome by the testimony of Mr. Henry of conversations with other directors of the defendant company, and by one of the defendant's by-laws.

But the president had a clear right, *virtute officii*, to receive this stock for the defendant, and also to perform his subsequent acts touching the stock. The right was inherent in his office. It was in the regular course of the business of the defendant, which was to loan money and credit upon security. Any limitation upon this power of the president was only good as between the corporation and its officers.

Merchants' Bank vs. *State Bank*, 10 *Wall.*, 604.

In the court below, the defendant cited several cases respecting the liability of pledgors of stock for calls, arising under English statutes, the terms of which, it was held, made the registry conclusive. Of course, no such rule obtains under our statute. It would prevent the court from examining into the merits of pretended transfers No nominal shareholders could be dislodged and no actual shareholder could be put on the list of contributors. Protection not only to shareholders, but to creditors, has induced our courts to go behind the registry and avoid a pretended colorable transfer.

It was also argued that the pledgee of stock had only a lien upon it, and that unless he was also the registered holder, no more reason existed for holding him liable than an attaching creditor or any other person having a lien. Obviously, however, the analogy fails as soon as the pledgor has transferred the stock out of himself upon the books of the bank, and the pledgee becomes the potential owner, with all the privileges of ownership in himself or his representative. The pledgee of stock is entitled to a transfer on the books of the company and is not liable to return the specific shares to the pledgor, but only an equal number of like shares, *Hubbell* vs. *Drekel*, 11 *Fed. Rep.* 115; *Nourse* vs. *Prime*, 4 *Johns, Ch.*, (*N. Y.*,) 490 *Allen* vs. *Dykens*, 3 *Hill*, 593; *Gilpin* vs. *Howell*, 5 *Barr*, (*Penna.*) 41.

It was also attempted to show a fanciful trust in Ferris, the nominal holder, with the defendant, William Kern and William H. Blumer & Co., as gradations of *cestuis que trustent.* Even if this subterfuge would help the defendant, there is no evidence that the trust was ever created except in fancy. Ferris certainly never heard of it and did not accept of it, and William Kern did not consent to it; and especially Ferris' immediate assignment of the stock and transfer of all control over it to the defendant, is as fatal to this theory as to all the defendant's other theories respecting the facts in this case. The office of Ferris, as well as of his predecessor, McCloskey, was much simpler; he was the defendant's representative upon the books of the company; Francis Ferris was a name, an *alias* of the defendant.

P. K. ERDMAN,
EDW. HARVEY,
Attorneys for Plaintiff in Error.

111-479

SUPREME COURT U.S.
FILED
MAR 20 1884
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

Anderson

vs.

The Philadelphia Warehouse Company.

Oct. 1883. 298.

DEFENDANT IN ERROR'S BRIEF.

The averment in the declaration which is the material fact in the case is: "That at the time of the failure of the bank the defendant, The Philadelphia Warehouse Company was then and there the holder of four hundred and fifty shares of the capital stock of the bank," whereby they became liable, &c. Rec. page 7.

The statute which creates the supposed liability imposes it by these words: "The shareholder of every national banking association shall be held individually liable, &c." Sections 5139, 5151.

That this did not mean the real owner, much less any party interested, is shown by section 5152, which exempts executors, administrators, and trustees, and in place of them, imposes the liability on the estates or funds in their hands, but not on the owners of the trust funds.

The only question at the trial was whether the plaintiff's allegation was proved. It is not pretended that the defendants' name ever appeared on any book or certificate whereby they were made shareholders. It is asserted that a certificate was issued to "T. C. Henry, Pres.," and that this made them shareholders, because of the proof that T. C.

Henry was the president of the company. The certificate is on page 64 of the record.

Unless the person for whom the shareholder holds the shares is the shareholder within the meaning of the statute, which he certainly is not, the company never was a shareholder at all, even for an instant. But the company never authorized or sanctioned this transfer to Mr. Henry as their president, or for any purpose. They had agreed to lend on securities, and this certificate was sent as one of them. It was sent on or after December 27th, 1871 (It was issued on that day, Rec. page 64), and the directors, on first hearing of the fact, declined accepting it in that form lest it might impose a liability, and it was formally repudiated January 3d, 1872. Rec. 87, 88, and 100. And it was transferred to another person to hold as collateral security for the loan. Rec. 65. The owners of the stock and the bank assented to this rejection of the transfer to Henry, and to the proposed transfer by him. page 88, which was made January 3d, 1872 (within a week), and they procured the bank to issue a new certificate to the proposed holder (see the letter of Blumer, one of the firm, page 109 of the record).

From that day till the trial, the shares stood in the name of persons selected by the lender, with the consent of the owner and borrower, as a collateral security for the loan.

The borrowers, who were the owners, subject to the pledge, exercised all acts of ownership, and received all the dividends, nine in number, page 53–57 record.

The jury found that the defendants never did authorize the stock to be transferred to them or to their president, page 121, 124, record. The question is, did the evidence, in spite of that refusal to accept the shares, prove they were *the shareholders?* That is, is it perfectly immaterial that the pledgee refused to take the shares even in the name of their president? It is argued that the president had authority to agree to accept the shares. Doubtless this would be correct if it was not proved that he had never been authorized, and when the fact was first known the

act of transfer was repudiated. And what is the more material point is, that all parties to the contract acquiesced in the refusal to accept the title, and in the change intended to preclude a suspicion of title appearing to be in the defendants.

It does not seem to be contended that the interest or sort of ownership which vested in the defendants as pledgee for the loan, created a liability. It could not be in the face of all the authorities. Rosevelt *vs.* Brown, 11 New York, 148; Magruder *vs.* Colston, 44 Md., 349; Empire City, 18 New York, 199. Thompson on Liability of Stockholders, sections 177, 178, 223, cited by Strong, J., with approbation, seem to settle this.

It should be remembered that in New York there is an additional liability imposed, not found in the legislation of the United States. There all equitable or real owners are made liable by statute, see the remarks in 18 New York, page 224, where these words are held not to mean such an ownership as the defendants (pledgees), but are rigidly confined to actual ownership in the name of a naked trustee. It seems to have been overlooked in some of the American decisions, while constantly pointed out in others, that this is a statutory and not a common-law liability. That this sort of legislation is not remedial, for it does not regulate or enforce an existing right or duty. *It creates a duty where none existed, and where all personal liability, legal or equitable, had been theretofore excluded.* It is therefore to be most strictly construed, and, except where this has been forgotten, it has always been most strictly construed. Thompson, section 50; 9 Cush., 199, Gray *vs.* Coffin; 14 Gray, 489, Dane *vs.* Manfg. Co.; 5 Md., 54, Martin *vs.* Ins. Co., seems to be a mistaken reference; 71 Penna., 293, Moyer *vs.* Pa. Slate Co.; 85 Penn., 78, Mean's App.; 47 Penn., 49, Brinham *vs.* The Coal Co. And the liability has been confined to the registered as being the only legal owner. Thompson, section 178, 223, 13 Mee. & Welsby, 481, Franklin *vs.* Neate. The trustee and not the *cestui que trust.* Thompson, section 179, and

negativing the notion that *ownership* creates a liability if there be not also the status of shareholder. 12 Ind., 196, Helm *vs.* Swiggett; 5 Blackf., 197, Colemen *vs.* Spencer; 10 Ind., 499, R. R. Co. *vs.* McCormick; 2 Conn., 579, Manfg. Co. *vs.* Smith. The New York statute introduced liability on equitable ownership. Thompson, section 223. The bank act excludes it.

See also Morawetz, section 602, and Hemming *vs.* Maddick & R., 9 Eq., 175. The liquidator can not sue on the shareholder's right as a trustee to indemnity from his *cestui que trust.* Section 607: The effect of the provision is to create a *statutory contract* between the *members* of the corporation. Also section 373, the liability is confined to *the legal* owner and *does not include the cestui que trust.* The cases of subscriptions in fictitious names probably rest on the rule that would be applied to signatures to notes. If effected without the consent of the person whose name is used, it would be held to be the signature of the person signing; if with his consent, the act of the person whose name was used.

What was the position of the defendants? For a few days in 1871–2 their president, but not the company, apparently was a shareholder. This was rejected, and never assented to by him or by the company. The transferror assented to the rejection. A person was selected by mutual consent of owner and lender to hold the title as security for the pledgee.

The case is rested by the plaintiff in error on The National Bank *vs.* Case, 99 U. S., 628: not on the decision, but on selected passages from the opinion.

The *decision* there was this, and only this. A registered shareholder, at the time debts are contracted, is liable under the statute. He does not cease to be a shareholder because he holds as pledgee. Nor can he, after the *liability has attached* by transfer, divest himself of the liability if done to avoid the existing liability.

It is sought to make this read, that a refusal to accept a transfer and to become shareholder if the motive of refusal

is to avoid possible future liabilities, is a fraud on the future creditors. That a re-transfer by one refusing to accept a transfer made without his authority, but rejected as soon as known, is a fraud and equivalent to a transfer to avoid a liability that *had already* attached. The result of such doctrine would be to make the transferree liable though he never assented and had no connection or even knowledge of the transaction.

If the defendants are not liable merely as pledgees; if they never agreed to be shareholders, it is plain they did not become shareholders by the transfer not assented to but rejected. To hold that the re-transfer was an assent to the transfer is absurd. The title being apparently, but by mistake, placed in them, it cannot be construed as an assent that they re-transferred.

Then the remarks of Strong, J., on the rule in England as to transfers out and out, are relied on. They apply only to cases in which there was once an actual holding with intent to hold and to be a shareholder, and the discussion is as to what constitutes a transfer to discharge that liability. What application has that to a transfer by mistake, never accepted with intent to become a shareholder?

The principle on which this case should rest is vastly important. What is the rule for construing statutes imposing a liability hitherto unknown or, as here, hitherto excluded by law and equity? Nothing can be more dangerous than extending such liabilities. A duty imposed or a liability created *de novo* by statute is penal in the highest degree. The word *shareholder* is technical, and has as certain a meaning as any in the language. If it were intended to impose the duty because of property, the word *owner* would have been used. That would have brought in all who had any *jus in re* or *jus ad rem*. Why was it omitted, and the technical word stockholder selected, but because it was intended to use a word that enabled every one to know with certainty when he became liable and how he can avoid becoming so? Why were no words imposing the duty on persons using the name of another to hold the shares, as in New

York? If, as is universally admitted, the shareholder, though having no real ownership, is liable because of the statutory provision, is it not inconsistent to assert the real ownership was intended? If so, the other was not. It is impossible to say that by the same word both the nominal and the actual owners are made liable. If a statute imposes a duty on the holder of the *legal title* to property, would any one assert that by this the real secret beneficial owner or *cestui que trust* is intended?

But where are we to stop if the ownership such as this of the defendants is included? It is a mere lien, and not ownership in the ordinary acceptation. The pledgor is recognized as the real owner; he receives the dividends, as he did here. He votes under proxies. A creditor of his can redeem, while the pledgee cannot lawfully sell or even transfer without authority from him.

If that sort of ownership imposes a liability by the statute, all similar ownerships must do so. A creditor who has levied; even the sheriff after levy; creditors under an assignment for their benefit; creditors in insolvency, in bankruptcy, &c., &c., all become liable by virtue of the ownership thus acquired.

That this was never intended the act itself says, when providing for cases of trusts and the administration of estates of owners. It does not impose a liability on the real beneficial owner in any case. It substitutes the fund belonging to the particular trust in the hands of the registered owner, if he be a trustee, that is the estate of the deceased owner, and only so much of that as is part of the particular trust.

It is, we suppose, not disputed, or even disputable, that the liability under the statute is confined to liability for debts, either incurred or due, while the person to be charged was shareholder. It cannot be supposed to have been intended that every shareholder, however he may have ceased to be shareholder, is to be liable for all debts that may at any future time be created, irrespective of the question of solvency of the corporation when he ceased to be shareholder.

The argument in this case presupposes this, for it rests on there being fraud in evading that liability. And the liability was not one existing or even suspected at the date of the actual re-transfer; it was the possible future liability it was intended to avoid, which liability was precisely like that of a partner before the firm had actually made a transaction.

The distinction between avoiding and evading a statutory liability is sanctioned by high authority. Hankins *vs.* Clutterbuck, 2 C. & K., 810, and by Erle, C. J., Howkins *vs.* Bennet, 7 Com. B., 553, N. S. And also by Lord Selborne.

If the view sometimes taken is correct that the statute imposes a liability on *ownership*, it is very inconsistent to assert liability in a person because he is shareholder though not owner, and also in another because he is owner though not shareholder. The English decisions have seen and acted on this. There is but one apparent exception in their decisions, and that is seen to be really none when the point is understood. They do hold that when there is an obligation which *was attached*, then it is a fraud to create a secret trust for the person liable, and set up that trust as avoiding the liability. This merely means that you look to the time of incurring the liability to determine who is liable unless some competent person is substituted.

They have never held that a trust to prevent the liability ever attaching is a fraud. For they see, that unless the statute imposes the duty on the owner, a court cannot construe the statute as imposing it or impose it on any one not within the terms of the act. If they were to do so, they must do it on a supposed equity, and enlarge the words to meet that. But there is no guide for this. For it is impossible to suppose a legislature so ignorant as not to know that shareholders may frequently not be owners of the shares, or that owners of shares are frequently not shareholders. And that by selecting the one word and rejecting the other they intended what they said.

No one disputes but this is true in determining who may vote. No proof of ownership other than registry on the books or holding a certificate is accepted. And in adding a security to creditors which they were not by law entitled to, the act being a penal and not a remedial one, must be construed strictly. As soon as by the letter of the law a right exists, which is, when a debt is contracted and cannot be paid out of corporate assets, then, but not till then, can fraud be predicated of a transfer to escape a liability any more than in a conveyance before assessment of taxes on the owner, or before a covenant is broken, or before rent accrues, can it be said there is fraud because the intention is to prevent that liability attaching.

What would become of their conveyancing on any other rule? Till dower was abolished it was the common practice to vest the title in a trustee to *bar the dower* of the real owner, and then give him by trust and power absolute dominion over the property.

If, however, we discard this, and think it proper to enlarge the meaning and bring in the owner, though not a shareholder, what meaning will we attach to that word? Can it be safe to go beyond the meaning in ordinary parlance? Can we venture to say that the mortgagee or pledgee or any lien creditor is an owner in the sense of the statute, which declares by necessary impliation, that a *cestui que trust* of a trustee shareholder is not an owner?

The result of all this is, the defendants were never shareholders at any time.

For a few days without their consent shares were registered in the name of T. C. Henry, who was then president and was intended to be their trustee.

This was not assented to, but repudiated by him and them as soon as known.

Then the shares stood in the name of one who was secretly a trustee for their interest as pledgee, and subject to that for the real owner.

This began long before any liability to creditors is pretended to have existed. The plaintiffs, therefore, did not

prove their averment, that at the date of the assessment by the officer of the law the defendants were shareholders.

It must be manifest, if the defendants are held to be shareholders within the meaning of the statute because they are pledgees, and the actual legal shareholder is a trustee for them, then they differ from all other *cestuis que trusts* who certainly are expressly exempted. And it will be impossible to create a charge on shares by pledge or otherwise if a specific lien is created without drawing to that species of ownership the liability of shareholder. A delivery of the certificate with a power to transfer which becomes irrevocable because of the consideration (coupled with an interest is the technical phrase), creates precisely the title that the defendants have held. They are absolutely identical, saving that in the latter a stranger is the trustee, in the former the borrower and owner.

That pledgees as such if not actual shareholders have never been supposed to be liable, is decided in every one of the many cases that hold and reason out the grounds that a shareholder cannot escape by proving that he held merely on pledge. Why reason this out with so much trouble, if he as pledgee is also liable even though he is not shareholder. The decisions would have been *quacunque via* he is liable: if shareholder then he is by the words of the statute; if pledgee then by the meaning and intent of the statute: whereas, every case assumes as the *ratio decidendi*, that it is the fact of holding the share as shareholder, and not the quality of his beneficial interest, which determines the question.

On authority:—the want of any, to support the claim is really conclusive.

Similar laws have been in force for a long time here and in England. Instances have certainly occurred in innumerable cases. We have only three sorts of instances in which the liability has been enforced. Not one in which it was attempted in a case like the present:

1. Registered owner. And it is quite immaterial that he is but a trustee or agent.

2. Actual owner using another's or a fictitious name.

3. Transfer to avoid an existing liability—in other words, fraudulent attempts to evade a liability after it attached.

Not only has there been no case in which a pledgee is held liable because the shares were held for him, but the very reverse has been held, and also admitted as too plain for discussion.

14 Equity, 10, City Terminus Hotel Co., was that of a pledgee the shares being held in trust to secure him.

3 Ch. Appeal, 119, *Sichell's Case*, where the transfer was made to the pledgee, but the company would not register though solicited.

4 Ch. Appeal, 260, *Royal Bk. India*, the distinction is taken—if there has been a *legal* transfer the registered owner is liable though he be but a mere pledgee, because he chose to make himself apparently legal owner. Then there is Mr. Lindley's exhaustive treatise, where he states all the possible cases of liability of shareholders as contributories, as well those decided as those in which he thinks there could be a liability which had not been decided, and there is nothing like this suggested. Surely, it was not because such a case had never occurred to him as possible. The case of a trustee is put, and he admits though the *cestui que trust* must indemnify, the company and its creditors have no claim on him. 2 Lindley, 1390, 1394–5, *n. d.*, nor can they enforce the right of the nominal owner to indemnity without his consent. 9 Equity, 175, Hemming *vs.* Maddick.

No one will, I presume, question, that it is essential that property may be freely used as a security. Obviously, such a rule as it is proposed to establish, would put an end to this as to this kind of property. No one will touch property where there may be liability, and no corresponding benefit. As well might all purchasers, who stipulate that another shall be the covenantor, or the bond and mortgage, be said to be the person liable.

All know they are liable if they take actual transfer.

No one has ever dreamed this results from a mere right to a transfer if not executed, unless he be the actual owner.

Sir W. Page Wood is distinct, that there cannot be a double liability in two persons, each being owner (of course not joint.) 3 Equity, 366, Chapman and Barker's Case. He evidently thinks anything that leads to this is too absurd for discussion.

Here you are asked to make three separately liable—registered owner, real owner, and creditor of the real owner, because he is pledgee.

It is a mere trick of words, and forcing the statute, as was done with the law of treason. The plain intent is to make that man, who is by law and by common understanding the shareholder, liable to contribute, but not persons who have but a contractual right to have the shares sold, and the proceeds applied for their benefit as far as they may then have a right to them.

GEO. JUNKIN,
R. C. McMURTRIE.